

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Application of )  
Broadview Networks, Inc. for Approval of an ) DOCKET NO. 12-2514-01  
Indirect Transfer of Control ) REPORT AND ORDER  
)

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ISSUED: October 16, 2012

By The Commission:

This matter is before the Commission on the Application of Broadview Networks, Inc. (“Broadview Networks” or “Applicant”) for Approval of Transfer of Indirect Control of Broadview Networks to Broadview Networks Holdings, Inc. (“Broadview Holdings”).

Broadview Networks filed its application on July 30, 2012, and requested expedited review and action. The application contains all the information required by Utah Admin. Code R746-349-7(A)(1).

On August 29, 2012, in response to a Commission action request, the Division of Public Utilities (the “Division”) submitted a recommendation to approve the application.

On September 5, 2012, Broadview Networks filed a supplement to its application, noting that Broadview Holdings and its subsidiaries, including Broadview Networks, filed a Chapter 11 petition in the United States Bankruptcy Court for the Southern District of New York. According to Broadview Networks, the bankruptcy filing serves to convert the legal status of Broadview Networks to a debtor-in-possession, and both Broadview Holdings secured noteholders and its existing stockholders support the bankruptcy reorganization petition.

Broadview Networks asserts the bankruptcy has been structured to ensure that customers will not be adversely impacted and that all unsecured creditors, including Broadview Holdings’ carrier

partners, will be fully compensated in the ordinary course of business. Broadview Networks anticipates that Broadview Holdings will emerge from bankruptcy by the end of October 2012.

In addition, Broadview Networks' supplement to its application requests approval, to the extent necessary, for High River Limited Partnership to hold more than 10 percent of Broadview Holdings upon consummation of the transfer of indirect control. As explained in Broadview Networks' application, no single entity is expected to control Broadview Holdings or Broadview Networks following the transfer, with the exception of MSD Credit Fund, L.P. and High River Limited Partnership, which is expected to hold more than 10 percent equity in Broadview Holdings.

On September 12, 2012, in response to the Commission's second action request in light of the supplemental information filed by the Applicant, the Division submitted another recommendation to approve the application. The Division's memo explains: "The Division has reviewed the amended information . . . and still believes that the transfer of control is in the public interest. As a result of the restructuring, the [Applicant] should be in a better financial position to provide expanded and advanced telecommunications services in the State of Utah." Division Memo, filed September 12, 2012.

Pursuant to Utah Admin. Code R746-349-7(A)(2), the Commission issued a public notice of the application and notice of hearing on September 5, 2012, allowing for the submission of comments by any interested party regarding the application. No comments or objections were received.

On September 27, 2012, the Administrative Law Judge (“ALJ”) for the Commission held a hearing, pursuant to Utah Admin. Code R746-349-7(A)(2). Danielle Burt appeared telephonically on behalf of the Applicant, along with Charles Hunter, and Ms. Burt moved for *pro hac vice* admission. Justin Jetter, Assistant Utah Attorney General, appeared for the Division, and was accompanied by Ron Slusher, Utility Technical Consultant for the Division.

No objection was made to Ms. Burt’s motion for *pro hac vice* admission, and the motion was granted. The ALJ took administrative notice of the application, supplement to the application, and memoranda filed by the Division recommending approval. Applicant’s witness, Mr. Hunter, provided an update that the Applicant expects approval in mid-October of its pending § 214 application before the Federal Communications Commission for both international and domestic service. Mr. Slusher testified on behalf of the Division in support of the application. Mr. Slusher further testified that a transfer of control in this docket is in the public interest. No one appeared at the hearing objecting to the application.

Under Utah Admin. Code R746-349-7, “[i]f no objection to the proposed transaction is submitted in any filed comments or reply comments, the Commission will presume that approval of the transaction is in the public interest and use the information contained in the application and accompanying documents as evidence to support a Commission order.” Utah Admin. Code R746-349-7(A)(3). Because there is no objection to the granting of the application, the Commission thus presumes the application for approval of transfer of indirect

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control is in the public interest. Moreover, the Division's memoranda and testimony provide additional support for approval of the application.

ORDER

For the foregoing reasons, the Commission approves the transfer of indirect control of Broadview Networks, Inc. to Broadview Networks Holdings, Inc.

DATED at Salt Lake City, Utah, this 16<sup>th</sup> day of October, 2012.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 16<sup>th</sup> day of October, 2012, as the Report and Order issued by the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
DW# 236161

Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance 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 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 Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16<sup>th</sup> day of October, 2012, a true and correct copy of the foregoing Report and Order was delivered upon the following as indicated below:

By Electronic-Mail:

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