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**BEFORE THE  
PUBLIC SERVICE COMMISSION OF UTAH**

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Application of  <b>Bandwidth.com CLEC, LLC</b>  for Approval to Transfer Indirect Control	APPLICATION FOR APPROVAL TO TRANSFER INDIRECT CONTROL  Docket No. 17-2494-01
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**APPLICATION**

Bandwidth.com CLEC, LLC (“Bandwidth CLEC” or “Applicant”), by its undersigned counsel, submits this Application pursuant to Utah Code Ann. § 54-4-29 and 54-8b-3(1)(b) and the rules of the Public Service Commission of Utah (the “Commission”), including R746-349-7 and R746-110. Applicant requests approval, to the extent required, to transfer indirect control of Bandwidth CLEC to David A. Morken (“Transferee”) in connection with a planned restructuring of stock by its direct parent Bandwidth.com, Inc. (“Bandwidth”) related to an anticipated initial public offering (“IPO”) by Bandwidth (the “Transaction”). Mr. Morken is the Cofounder, Chief Executive Officer and Chairman of Bandwidth. Upon completion of the Transaction, Mr. Morken will hold a majority of the voting power of the outstanding Bandwidth stock, and as a result, he will indirectly control Bandwidth CLEC.

In support of this Application, Applicant provides the following information:

## **I. DESCRIPTION OF THE APPLICANT**

Bandwidth CLEC, a Delaware limited liability company and wholly owned subsidiary of Bandwidth, a Delaware corporation, is headquartered at 900 Main Campus Drive, Suite 500, Raleigh, North Carolina 27606. Bandwidth, together with its subsidiary Bandwidth CLEC (together, “the Company”) is the leading cloud-based communications platform for enterprises with one of the largest Internet protocol (“IP”) voice networks in the nation. Its solutions include a broad range of software application programming interfaces (“APIs”) for voice and messaging functionality as well as end-to-end communications solutions through its Communications platform-as-a-service (“CPaaS”). Its customers include large enterprises as well as small and medium-sized businesses. In Utah, Applicant is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services pursuant to Docket No. 08-2494-01 issued on April 3, 2008.

Mr. Morken is the Cofounder, Chief Executive Officer and Chairman of Bandwidth and is therefore well-qualified to obtain control of Bandwidth CLEC. He cofounded the Company 18 years ago and has led the Company to develop and deploy its APIs and CPaaS offerings and build its IP network. Under Mr. Morken’s leadership, Bandwidth has increased use of its IP network from no minutes or messages in 2008 to 27 billion minutes and 10 billion messages in the twelve months ended June 30, 2017. Prior to the anticipated IPO and inclusive only of actual outstanding securities, Bandwidth’s equity interests are beneficially held by Mr. Morken (approximately 12 percent), James A. Bowen (approximately 13 percent), Henry R. Kaestner (approximately 22 percent), and Carmichael Investment Partners, LLC (approximately 15 percent). No other entity or individual holds a 10 percent or greater interest in Bandwidth. As described in Section III below, Mr. Morken will obtain a majority of the voting power of the

outstanding Bandwidth stock in connection with the Transaction and as a result, he will indirectly control Bandwidth CLEC.

**II. DESIGNATED CONTACTS**

Questions, correspondence or other communications concerning this Application should be directed to:

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**III. DESCRIPTION OF THE TRANSACTION**

On August 16, 2017, Bandwidth confidentially filed with the Securities and Exchange Commission (“SEC”) a registration statement on SEC Form S-1 for the IPO. The planned IPO of Bandwidth includes a restructuring of stock in which Bandwidth anticipates that Mr. Morken will obtain a majority of the voting power of the outstanding Bandwidth stock. As a result, Mr. Morken will indirectly control Bandwidth CLEC. The IPO is not expected to result in any new equity owners of Bandwidth who will hold 10 percent or more ownership in Bandwidth CLEC. As a result of restructuring of stock planned as part of the IPO, Bandwidth anticipates that the

voting power of shares as well as the equity interests beneficially held by some of the current owners will be diluted.

While the date of the IPO is yet to be determined, Applicant anticipates that the IPO will occur prior to December 31, 2017, and is seeking to have all required regulatory approvals as soon as possible, and no later than December 31, 2017, so that the stock restructuring can occur either before the IPO or as soon thereafter as possible.

For the Commission's reference, charts depicting the Applicant's current ownership structure, as well as the expected ownership structure post-closing, are provided as Exhibit A.

**IV. INFORMATION REQUIRED BY R746-349-7**

Pursuant to R746-349-7, Applicant provides the following information:

**a. identification that it is not an ILEC,**

Applicant confirms that neither it nor its affiliates serve as an ILEC in Utah.

**b. identification that it seeks approval of the Application pursuant to this rule,**

Applicant confirms that it seeks approval of the Application pursuant to the informal adjudication process set forth in this rule.

Applicant further requests that the Commission issue a report and order granting this Application without a hearing consistent with Utah Code Ann. § 54-8b-3 and R746-110. If Applicant's request for informal adjudication is uncontested, the Application in the present case meets the conditions of Utah Code Ann. § 54-8b-3(1)(b) because this matter is not one of the proceedings described in Section 54-1-3(2)(a)<sup>1</sup> and the Applicant has requested that the

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<sup>1</sup> Utah Code Ann. § 54-1-3(2)(a) provides:

The following proceedings shall be heard by at least a majority of the commissioners:

(i) general rate proceedings to establish rates for public utilities which have annual revenues generated from Utah utility service in excess of \$200,000,000; or

Application be adjudicated informally. In that situation, the Commission should designate this Application as an informal adjudicative proceeding, presume that approval of the Transaction is in the public interest pursuant to R746-349-7(A)(3), and grant the Application without a hearing.

- c. a reasonably detailed description of the transaction for which approval is sought,**

A reasonably detailed description of the transaction is provided in Section III, above.

- d. a copy of any filings required by the Federal Communications Commission or any other state utility regulatory agency in connection with the transaction, and**

Applicant has filed a Domestic and International Section 214 Application with the FCC. A copy of the Domestic Section 214 Application is provided as **Exhibit B**. In connection with this transaction, Applicant also expects to request approval from the utility regulatory agencies (“PUCs”) in the following jurisdictions: California, Colorado, Georgia, Hawaii, Indiana, Louisiana, Maryland, Minnesota, Mississippi, New Jersey, New York, Ohio, Pennsylvania, Texas, Utah, Virginia, and West Virginia. Due to the voluminous nature of the state filings, most of which contain the same information, Applicant has only attached as **Exhibit C** a copy of the New York filing requesting approval. Applicant will also provide notice to certain other PUCs. Due to the voluminous and repetitive nature of the notices to be sent to the PUCs, Applicant has not included copies of the notice filings. Applicant will provide any additional filings or notices at the request of the Commission or the parties to this docket.

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(ii) any proceeding which the commission determines involves an issue of significant public interest.

Utah Code Ann. § 54-1-3(2)(a) (2016).

- e. **copies of any notices, correspondence or orders from any federal agency or any other state utility regulatory agency reviewing the transaction which is the subject of the Application.**

Applicant has not yet received any notices, correspondence or orders from any federal agency or PUC reviewing the transaction. To the extent requested by the Commission, Applicant will forward any orders or similar actions granting or denying the request for transfer of control.

**V. PUBLIC INTEREST CONSIDERATIONS**

The Transaction will serve the public interest. The IPO is expected to provide Bandwidth with a new infusion of capital and with greater flexibility for corporate and financial transactions which will allow it to become a stronger competitor. The IPO will not affect the technical or managerial qualifications of Bandwidth CLEC, which will continue to be managed by its highly-qualified and experienced management team including Mr. Morken.

At the same time, the Transaction will have no adverse impact on Bandwidth CLEC's customers or competition in the market for telecommunications services more generally. The Transaction will be transparent to Bandwidth CLEC's customers. Immediately following the Transaction, Bandwidth CLEC will continue to provide service to its customers at the same rates, terms, and conditions available under existing contracts and without interruption.

VI. CONCLUSION

For the foregoing reasons, Applicant submits that the public interest, convenience, and necessity would be furthered by the Transaction described above, and respectfully request that the Commission grant the relief requested in this Application.

Respectfully submitted, this 11<sup>th</sup> day of September, 2017.



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## **LIST OF EXHIBITS**

EXHIBIT A      Pre- and Post-Transaction Chart

EXHIBIT B      FCC Application

EXHIBIT C      New York Application

VERIFICATION