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Attorney for CNS Networks LLC

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

In the Matter of the Application of CNS NETWORKS LLC for a Certificate of Public Convenience and Necessity to Provide Facilities-Based Public Telecommunications Services within the State of Utah	Docket No. <u>23-2640-01</u>
	APPLICATION

APPLICATION

CNS Networks LLC (“Applicant”), by its undersigned counsel and pursuant to Chapter 8b of Title 54 of the Utah Code; the Commission’s Rules of Practice and Procedure, Utah Admin. Code R746-349-1 et seq.; and the federal Telecommunications Act of 1996, 47 U.S.C. §§ 151 et seq., applies to the Utah Public Service Commission (“Commission”) for a certificate of public convenience and necessity (“CPCN”) authorizing Applicant to operate as a provider of facilities-based intrastate public telecommunications services in the State of Utah.

In support of its Application, Applicant provides the following information pursuant to Utah Admin. Code R746-349:

I. GENERAL INFORMATION

A. Corporate Information

Applicant’s legal name is “CNS Networks LLC.” Applicant may be reached at its principal place of business:

CNS Networks LLC
2595 Canyon Blvd., Suite 400
Boulder, CO 80302

Applicant is a Delaware limited liability company formed on August 23, 2019 and has undergone two name changes. Applicant's formation documents, including the name change documents, and its Utah Foreign Registration Statement are attached as **Exhibit A** and **Exhibit B**, respectively.

Applicant is wholly owned by Congruex Group LLC, which is in turn directly and indirectly owned by three intermediate companies (Congruex Intermediate III LLC, Congruex Intermediate II LLC, and Congruex Intermediate Parent LLC). Applicant's ultimate parent is Congruex LLC. Applicant, Congruex Group LLC, the three intermediate companies, and Congruex LLC are headquartered at 2595 Canyon Blvd., Suite 400, Boulder, CO 80302. Congruex LLC was formed in late 2017 by industry executives Bill Beans and Kevin O'Hara in partnership with Crestview Partners ("Crestview"). Crestview is a private equity firm focused on the middle market that manages funds with over nine billion dollars of aggregate capital commitments. Crestview is located at 590 Madison Avenue, 42nd Floor, New York, NY-10022.

B. Contact Information

Correspondence or communications pertaining to this Application should be directed to:

Adam E. Weinacker
Parsons Behle & Latimer
201 South Main Street, Suite 1800
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801-536-6111 (fax)
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With a copy to:

Andrew D. Lipman
Danielle Burt
Leetal Weiss
Morgan Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, DC 20004
202-739-3000 (tel)
202-739-3001 (fax)
andrew.lipman@morganlewis.com
danielle.burt@morganlewis.com
leetal.weiss@morganlewis.com

Questions concerning the ongoing operations of Applicant following certification should be directed to:

Bill Beans
President, CEO, and Co-Founder
CNS Networks LLC
2595 Canyon Blvd., Suite 400
Boulder, CO 80302
720-510-8326 (tel)
legalrequests@congruex.com

Applicant's registered agent in the State of Utah is:

CT Corporation System, System ID# 7140008-0250
1108 E. South Union Avenue
Midvale, Utah 84047

II. R746-349-3 FILING REQUIREMENTS

1. R746-349-3(1)(a)(i). Technical, Financial, and Managerial Abilities

Applicant has sufficient financial resources and managerial and technical qualifications to initiate and maintain the services and related operations in Utah as proposed in this Application. Applicant's financial, technical, and managerial qualifications are stated in the body of this Application, specifically in Sections 7, 10, and 11, and in the Exhibits hereto.

2. R746-349-3(1)(b). Proof of Bond

Applicant does not plan to collect customer deposits or offer any prepaid services in Utah. Further, Applicant will primarily provide point-to-point telecommunications services such as Private Line and other similar services to wholesale customers (e.g., other carriers and providers) and enterprise customers. Accordingly, Applicant hereby respectfully requests a waiver of the bond requirement pursuant to Utah Admin. Code R746-349-3(1)(b)(iii).

3. R746-349-3(1)(c). Facilities to Be Used

Applicant proposes to build a fiber-based network in support of carrier and enterprise customers in Utah. Applicant is a national end-to-end provider of design, engineering, construction, and maintenance services to broadband providers. Applicant's design and build solutions allow providers to efficiently deliver data, bandwidth, and support devices for their end users. Applicant will primarily provide point-to-point telecommunications services such as Private Line and similar services to wholesale customers (e.g., other carriers and providers) and enterprise customers. Applicant will provide services primarily using its own facilities and facilities leased from other carriers, but also seeks authority to provide service via resale arrangements. Applicant provides most of its services using fiber optic cable along with other equipment and facilities to originate, terminate, and amplify signals. Applicant will perform network and equipment maintenance necessary to ensure compliance with any quality of service requirements. Applicant will comply with all applicable Commission rules, regulations and standards, and will provide safe, reliable and high-quality telecommunications services in Utah.

Wherever feasible, Applicant will install or use facilities in or on existing structures. In some instances, however, existing structures or routes may not be available, and Applicant will install new infrastructure such as fiber and conduit. Such facilities will typically be constructed in

response to specific requests from customers seeking facilities between particular points or along particular routes.

Applicant does not currently intend to offer voice service or Internet access service. However, Applicant's facilities will be capable of transmitting communications of any nature, and Applicant expects that some of its customers will use the facilities to provide regulated voice or data communications services and that other customers will use Applicant's facilities for the provisioning of Internet access service or other unregulated services. Applicant therefore requests to be granted a CPCN.

4. R746-349-3(1)(d). Services to Be Offered

(a) R746-349-3(1)(d)(i). Classes of customers

Initially, Applicant will primarily provide services to wholesale customers (e.g., other carriers and providers) and enterprise customers. Applicant will primarily provide point-to-point telecommunications services such as Private Line and other similar services.

(b) R746-349-3(1)(d)(ii). Location of service

Applicant seeks authority to provide its proposed services to and from all points in Utah where demand for its services arises. Importantly, however, Applicant does not seek authority to provide local exchange service (as defined in Utah Code § 54-8b-2(11)) or other circuit-switched services within any local exchange that has fewer than 5,000 lines and that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state.

(c) R746-349-3(1)(d)(iii). Types of services to be offered

As described above, Applicant proposes to build a fiber-based network in Utah. Applicant will primarily provide point-to-point telecommunications services such as Private Line and other similar services. Applicant will provide services primarily using its own facilities and facilities leased from other carriers, but also seeks authority to provide service via resale arrangements.

Applicant does not currently own or lease facilities in Utah but plans to construct facilities to provide its services. Applicant does not plan to furnish switched voice services or dial tone at this time.

5. R746-349-3(1)(e). Access to Standard Services

Applicant does not plan to furnish switched voice services or dial tone at this time, and therefore requirements to provide access to directory assistance, directory listings, operator services and emergency services do not apply. If Applicant desires to provide local exchange service to end users in the future, it will seek to amend its CPCN to provide local exchange service and, at that time, explain how it proposes to provide access to ordinary intraLATA and interLATA message toll calling, operator services, directory assistance, directory listings, and emergency services.

6. R746-349-3(1)(f). Implementation Schedule

Applicant anticipates offering services in Utah as soon as reasonably practicable after it has obtained approval of its Application for a CPCN and completed the construction of its network.

7. R746-349-3(1)(g). Professional Experience and Education of Managerial Personnel

Applicant has the managerial and technical qualifications necessary to provide the proposed services in Utah. Applicant is managed by a highly skilled team with substantial expertise and experience in the communications industry, including extensive telecommunications business, technical, and managerial expertise. Descriptions of the qualifications and backgrounds for the key personnel of Applicant's ultimate parent, Congruex LLC, including its officers and directors, are attached hereto as Exhibit C. These biographies reflect management's substantial communications industry experience and expertise and demonstrate that the Applicant possesses

significant managerial and technical expertise operating a variety of communications services. The following are the key management of Applicant’s ultimate parent:

Bill Beans, Jr.	President, CEO, and Co-Founder
Kevin O’Hara	Co-Founder and Executive Chairman
David Howson	Chief Operating Officer
Andy Carlson	Chief Financial Officer
Rob Reynolds	Chief Information Officer

8. R746-349-3(1)(h). Employee Organization Chart

Applicant attaches as **Exhibit D** its employee organizational chart. Applicant’s employee organizational chart does not include the key management of its ultimate parent, Congruex LLC, which is detailed in **Exhibit C**. Applicant’s management team and its parent’s key management are based in Colorado and will direct its Utah operations. Applicant may utilize Utah-based contractors and personnel to construct and maintain networks in Utah.

9. R746-349-3(1)(i). Chart of Accounts

The requirement for a chart of accounts is typically necessary with an entity using regulated rate base or rate of return methodology so that authorities can be confident of the proper classification of revenue and expenses for end user price calculations in a monopoly environment. This is not the financial environment surrounding the services Applicant will offer. Therefore, Applicant asks that the requirement for a chart of accounts be waived. Applicant will utilize Generally Accepted Accounting Principles (“GAAP”) and be able to track its revenue in Utah for purposes of financial reporting.

10. R746-349-3(1)(j). Financial Statements

Applicant will rely on the financial resources of its ultimate parent, Congruex LLC (“Parent”), to demonstrate its financial qualification to operate within Utah. Applicant and its Parent are privately owned companies that do not release financial statements to the public.

Applicant attaches as **Confidential Exhibit E** the financial statements of Parent (the “Financial Statements”). The Financial Statements demonstrate the financial resources available to Applicant to provide the proposed telecommunications services in Utah.

Because Applicant and Parent are a privately held companies, their financial information is not publicly available. The Financial Statements are highly confidential and not publicly available. Release of the financial information could disadvantage Applicant by giving its competitors insight into Applicant’s ability to compete. Further, release of financial information, including revenue estimates, would substantially harm Applicant’s ability to negotiate with vendors, incumbent local exchange carriers, and other local and interexchange carriers for services and equipment. The release of financial information would also harm Applicant’s relationship with investors.

Applicant requests that the Financial Statements appended hereto as **Confidential Exhibit E** be treated as confidential and proprietary. Applicant takes all reasonable steps to protect the privacy of the financial information. In situations where Applicant must provide financial information to public utilities commissions or governmental entities, it does so under seal and requests confidential treatment. Therefore, the information provided in **Confidential Exhibit E** is proprietary and is being submitted in a sealed envelope marked “**Confidential – Subject to Utah Public Service Commission Rules R746-1-602 and 603.**” As it contains sensitive information regarding Applicant’s business operations, Applicant respectfully requests that this information be treated confidentially and not be released to any member of the public absent Applicant’s prior written permission.

(a) R746-349-3(1)(j)(i). Balance sheet, income statement and cash flow statement

As described above, Applicant will rely on the Financial Statements of Parent. Applicant therefore attaches as **Confidential Exhibit E** Financial Statements, which demonstrate the financial resources available to provide the proposed telecommunications services in Utah. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

(b) R746-349-33(1)(j)(ii). Letter from management

Confidential Exhibit E includes a verification attesting to the accuracy of the Financial Statements and that they were prepared according to GAAP. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

(c) R746-349-33(1)(j)(iii). Start-up company balance sheet

Applicant is relying on the Financial Statements of Parent in **Confidential Exhibit E**. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

(d) R746-349-33(1)(j)(iv). Financial statements of parent corporation

As stated above and provided in **Confidential Exhibit E**, Applicant is providing the Financial Statements of Parent, which demonstrate the financial resources available to provide the proposed telecommunications services in Utah. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

11. R746-349-3(1)(k). Financial Statements to Demonstrate Sufficient Financial Ability on the Part of the Applicant's Statements

(a) R746-349-3(1)(k)(i). Positive net worth

As discussed above, the Financial Statements provided in **Confidential Exhibit E** demonstrate that Applicant has sufficient financial resources to initiate and maintain the services

and related operations in Utah as proposed in this Application. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

(b) R746-349-3(1)(k)(ii). Sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations.

As discussed above, the Financial Statements provided in **Confidential Exhibit E** show that Applicant has access to the capital necessary to conduct its telecommunications operations in Utah. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

(c) R746-349-3(1)(k)(iii). Proof of bond

As discussed above, Applicant does not plan to collect customer deposits or offer any prepaid services in Utah. Further, Applicant will provide service only to other communications carriers on a wholesale basis (e.g., other carriers and providers) and to enterprise customers. Accordingly, Applicant hereby respectfully requests a waiver of the bond requirement.

12. R746-349-3(1)(l). Five Year Projection of Expected Operations

(a) R746-349-3(1)(l)(i). Pro-forma income and cash flow statements.

As discussed above, the Financial Statements provided in **Confidential Exhibit E** show that Applicant has access to the capital necessary to conduct its telecommunications operations in Utah. Applicant respectfully requests that **Confidential Exhibit E** be treated as Confidential Information subject to R746-1-602 and 603.

(b) R746-349-3(1)(l)(ii). Types of technology to be deployed.

Applicant will deploy the technology specified above in Section 3 of this Application.

(c) R746-349-3(1)(l)(iii). Maps of facilities locations.

Applicant does not have any existing facilities in Utah.

13. R746-349-3(1)(m). Implementation Schedule

Applicant anticipates offering services in Utah as soon as reasonably practicable after it has obtained approval of its Application for a CPCN and completed the construction of its network.

14. R746-349-3(1)(n). Technical and Managerial Abilities

Applicant has the managerial and technical qualifications necessary to provide the proposed services in Utah. Applicant is managed by a highly skilled team with substantial expertise and experience in the communications industry, including extensive telecommunications business, technical, and managerial expertise. Descriptions of the qualifications and backgrounds for the key personnel for Applicant's ultimate parent, Congruex LLC, including its officers and directors, are attached hereto as **Exhibit C**. These biographies reflect management's substantial communications industry experience and expertise and demonstrate that the Applicant possesses significant managerial and technical expertise operating a variety of communications services. Thus, Applicant possesses the managerial and technical qualifications necessary to operate a competitive telecommunications company in Utah, consistent with the Commission's requirements.

(a) R746-349-3(1)(n)(ii). Proof of certification in other jurisdictions

Applicant currently does not provide intrastate telecommunications services in any state. Applicant is currently authorized to provide intrastate telecommunications services in Colorado, Nevada, New Mexico, Minnesota, Ohio, Oregon, and Wisconsin. Applicant's parent, Congruex Group LLC, is authorized to provide telecommunications services (not offering local) in Ohio. In addition to this Application, Applicant has pending applications in Arizona, California, and Florida and plans to file applications or registrations to provide intrastate telecommunications services in other states. Applicant has not had a certification or authorization denied, suspended, terminated, or revoked by any state.

(b) R746-349-3(1)(n)(ii). 2 years of recent experience providing telecom service

Applicant currently does not provide telecommunications services. However, as discussed above, Applicant is managed by a highly skilled team with substantial expertise and experience in the communications industry, including extensive telecommunications business, technical, and managerial expertise.

15. R746-349-3(1)(o). Public Interest

Granting this Application will promote the public interest by increasing competition in the provision of telecommunications services in Utah. The entry of Applicant into the Utah telecommunications market will enhance competition in the provision of telecommunications services within Utah. By enhancing competition, Applicant will bring significant benefits to telecommunications users within Utah by providing: (a) lower-priced and better-quality service; (b) innovative telecommunications services; (c) efficient use of communications resources; and (d) increased diversification and reliability in the supply of communications services. Given the substantial expertise of Applicant's management team, Applicant's customers will benefit from that team's knowledge and experience in the Utah market. Applicant will operate its networks and offer services designed to meet the individual needs of its customers in providing high-quality services to their end-user customers in an efficient and cost-effective manner.

16. R746-349-3(1)(p). Authority to Conduct Business in Utah

Applicant's Foreign Registration Statement authorizing Applicant to conduct business in Utah is attached as **Exhibit B**.

17. R746-349-3(1)(q). Unauthorized Switching, Solicitation of New Customers, and Prevention of Unauthorized Switching

No complaints have been made, nor has any investigation or sanction been undertaken, against Applicant for unauthorized switching (“slamming”) or any other illegal activities. As stated above, Applicant will not provide switched voice services, including dial tone.

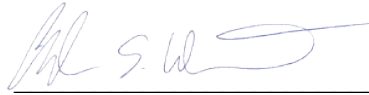
18. R746-349-3(1)(r). Applicant’s Written Solicitation Policies

Since Applicant does not provide switched voice services to end users currently, Applicant does not have a written solicitation policy. To the extent that Applicant provides local exchange services to end users in the future, Applicant will comply with all applicable laws and regulations to prevent the unauthorized switching of local service customers by the Applicant, its employees or agents.

* * *

WHEREFORE, Applicant respectfully requests that the Utah Public Service Commission issue a CPCN authorizing Applicant to provide, throughout the State of Utah, facilities-based public telecommunications services without authority to provide local exchange service (as defined in Utah Code § 54-8b-2(11)) or other circuit-switched services within any local exchange that has fewer than 5,000 lines and that is owned or controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the state. Applicant also requests that the Commission waive the requirement for Applicant to provide a bond. Applicant further respectfully requests that the Commission issue a CPCN to Applicant through an informal adjudication process, to the extent permitted under Utah Code section 54-8b-3(1)(b).

Respectfully submitted this **23rd** day of February, 2023.

A handwritten signature in blue ink, appearing to read "A. E. Weinacker", is positioned above a horizontal line.

Adam E. Weinacker
Parsons Behle & Latimer

Attorney for Applicant CNS Networks LLC

LIST OF EXHIBITS

EXHIBIT A Formation Documents

EXHIBIT B Certificate of Authority to Transact Business in Utah

EXHIBIT C Management Biographies of Applicant's Ultimate Parent Congruex LLC

EXHIBIT D Employee Organizational Chart of CNS Networks LLC

EXHIBIT E Financial Information – **CONFIDENTIAL**

VERIFICATION