



PUBLIC NOTICE

Federal Communications Commission
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DA 05-334

Released: February 7, 2005

DOMESTIC SECTION 214 APPLICATION FILED FOR TRANSFER OF CONTROL OF COMPUTER NETWORK TECHNOLOGY CORPORATION TO MCDATA CORPORATION

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 05-41

Comments Due: February 21, 2005

Reply Comments Due: February 28, 2005

On January 28, 2005, Computer Network Technology Corporation (“CNT”) and McDATA Corporation (“McDATA”) (collectively, “Applicants”) filed an application, pursuant to section 63.03 and 63.04 of the Commission’s rules,¹ requesting approval to complete a series of transactions which will result in the transfer control of CNT to McDATA.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission’s rules because (1) the Applicants and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) Applicants and their affiliates will provide local exchange service only in areas served by a dominant local exchange carrier (none of which are parties to the proposed transactions) and; (3) none of the Applicants nor their affiliates are dominant with respect to any service.³

CNT is a widely held corporation organized under Minnesota law. CNT provides interstate and intrastate telecommunications services throughout the United States. McDATA is

¹ 47 C.F.R §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² Applicants are also filing applications for transfer of control associated with authorization for international services as CNT also holds Section 214 authority to provide international services on a global facilities-based and resale basis. Any action on this domestic 214 application is without prejudice to Commission action on other related, pending applications.

³ 47 C.F.R § 63.03(b)(2)(i).

a publicly traded Delaware corporation with principal offices located at 380 Interlocken Crescent, Bloomfield, Colorado 800201. Neither McDATA nor any of its subsidiaries currently have any licenses relating to the provision of telecommunications services. Furthermore, neither McData nor CNT is affiliated with any other telecommunications carrier.

In order to effectuate this transaction, McDATA has created Condor Acquisition, Inc. (“Condor”) as a newly formed, wholly-owned subsidiary that was established to effect the merger of CNT.⁴ Applicants have entered into an Agreement and Plan of Merger dated as of January 17, 2005 through which (1) Condor will be merged with and into CNT whereupon the separate existence of Condor shall cease and CNT will be the surviving corporation (“Surviving Corporation”) and (2) outstanding shares of CNT will be converted into the right to receive 1.3 shares of McDATA Class A Common Stock plus cash in lieu of fractional shares and the Surviving Corporation will become a wholly-owned subsidiary of McDATA.

Upon completion of the proposed transaction, the current McDATA and CNT stockholders will own approximately 76% and 24%, respectively, of McDATA. Furthermore, the Applicants state that no person or entities will directly or indirectly own ten percent or more of the equity of McData and McData will be the only entity that directly or indirectly owns or controls ten percent or more of CNT. Following the proposed transactions, CNT’s customers will continue to receive service under the same rates, terms and conditions of service as before,⁵ and will continue to operate and provide services to its customers, retaining the assets used in the provision of those services. As a result, the transaction will be virtually transparent to CNT’s customers in terms of the services they receive.

Applicants assert that the proposed transfer of control is in the public interest because (1) it will increase competition in the telecommunications market by reinforcing the status of CNT as a viable competitor and (2) the transaction will minimize the disruption of service and be virtually transparent to CNT’s customers. Moreover, the Applicants state the proposed transaction is expected to facilitate competition by improving the operational position of both CNT and McDATA. The Applicants assert that the combination of CNT’s and McDATA’s complementary products and services will provide customers with the long-term confidence that their strategic requirements for a storage networking infrastructure needed for increased productivity, business continuity and regulatory compliance will be met.

GENERAL INFORMATION

The transfer of control identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any application if, upon further examination, it is determined to be defective and not in

⁴ Condor is a Minnesota corporation that is not authorized to provide telecommunications services in any state.

⁵ Additional information on CNT is available on the company’s website at: <http://www.cnt.com> and is incorporated herein by reference.

conformance with the Commission's rules and policies. Interested parties may file **comments on or before February 21, 2005** and **reply comments on or before February 28, 2005**.⁶ Unless otherwise notified by the Commission, this application will be deemed granted on the 31st day after the date of this notice.⁷ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) The Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: www.bcpweb.com; phone: 202-488-5300 fax: 202-488-5563;

⁶ See 47 C.F.R. § 63.03(a).

⁷ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

- (2) Tracey Wilson-Parker, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: tracey.wilson-parker@fcc.gov;
- (3) Kimberly Jackson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: kimberly.jackson@fcc.gov;
- (4) Terri B. Natoli, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C234, Washington, D.C. 20554; e-mail: terri.natoli@fcc.gov;
- (5) Susan O'Connell, Policy Division, International Bureau, 445 12th Street, S.W., Room 7-B544, Washington, D.C. 20554; email: susan.o'connell@fcc.gov; and
- (6) James Bird, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: james.bird@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone: 202-488-5300, fax: 202-488-5563, or via e-mail www.bcpweb.com.

For further information, please contact Tracey Wilson-Parker, at (202) 418-1394, or Kimberly Jackson at (202) 418-7393.

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