

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7046

Joint Petition of Computer Network Technology )  
Corporation, Condor Acquisition, Inc., and )  
McDATA Corporation for Approval of a )  
Merger and Transfer of Control )

Order entered: 3/15/2005

**I. INTRODUCTION**

On January 28, 2005, Computer Network Technology Corporation ("CNT"), Condor Acquisition, Inc. ("Condor"), and McDATA Corporation ("McDATA") (collectively the "Petitioners") jointly filed a petition ("Petition") and Telecommunications Merger and or Acquisition Request for Approval Form ("Application") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109 and 311, for approval of a merger of Condor with and into CNT.

On March 7, 2005, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the merger and related transactions, because the proposed transactions would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

**II. FINDINGS OF FACT**

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. CNT is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good (CPG No. 768) granted by the Board on December 10, 2003. Petition at 1.
2. McDATA is a Delaware corporation and is not authorized to provide

telecommunications services in Vermont. Petition at 2-3.

3. Condor is a newly formed Minnesota corporation established to effect the merger transaction with CNT. Condor is a wholly-owned subsidiary of McDATA and is not authorized to provide telecommunications services in Vermont. Petition at 2.

4. Pursuant to an Agreement and Plan of Merger, Condor will be merged with and into CNT, with CNT as the surviving entity and wholly-owned subsidiary of McDATA. Petition at 3-4.

5. Following the merger, CNT's customers will continue to receive service under the same rates, terms and conditions of service. Accordingly, the merger will not cause any inconvenience for Vermont consumers. Petition at 4.

6. The proposed transaction should result in an improved operational position for both CNT and McDATA, thus enhancing the ability of the Petitioners to offer competitively priced services in the Vermont interexchange telecommunications marketplace and promoting the public good. Petition at 4-5.

### **III. DISCUSSION**

The proposed transaction requires approval by the Board under 30 V.S.A §§ 107, 109, and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 107). The statutes also condition approval of a merger upon a finding that the merger will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not . . . merge nor consolidate . . ." without approval of the Board. 30 V.S.A. § 311 states that "[a] consolidation or merger . . . shall not become effective without the approval of the [Board] . . ." Under 30 V.S.A. § 107(a), "[n]o company shall directly or indirectly acquire a controlling interest in any company subject to the jurisdiction of the [Board] . . . without the approval of the [Board]." "Controlling interest" is defined as "ten percent or more of the outstanding voting securities of a company" or such other interest as the Board determines "to constitute the means to direct or cause the direction of the management or policies of a

company." 30 V.S.A. § 107(c)(1).<sup>1</sup> In order to approve the acquisition of such a controlling interest, the Board must first find that it will "promote the public good." 30 V.S.A. § 107(b).

After reviewing the Petition, we conclude that 30 V.S.A §§ 109 and 311 apply to the merger of Condor into CNT, because CNT is a certificated telecommunications carrier in Vermont. We also conclude that 30 V.S.A. § 107 applies because CNT will become a wholly-owned subsidiary of McDATA. We further conclude that the merger and transfer of control will not affect the services that CNT currently provides to customers in Vermont. CNT will continue to operate under its current name and tariff. The merger and transfer of control will also improve the operational position of both entities. The merger and transfer of control, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 107,109, and 311 and should be approved.

#### **IV. CONCLUSIONS**

The merger of Condor with and into CNT and the transfer of control of CNT to McDATA, should be approved because the transactions will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. §§ 107(b), 109, 311.

#### **V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The merger of Condor Acquisition, Inc., with and into Computer Network Technology Corporation, will promote the public good and, therefore, is approved.
2. The transfer of control of Computer Network Technology Corporation to McDATA Corporation will promote the public good and, therefore, is approved.
3. A Certificate of consent to the merger of Condor Acquisition, Inc., with and into Computer Network Technology Corporation, shall be issued.

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1. The statute also provides that "[t]he presumption that ten percent or more of the outstanding voting securities of a company constitutes a controlling interest may be rebutted by a company under procedures established by the board by rule." 30 V.S.A. § 107(c)(1).

DATED at Montpelier, Vermont, this 15<sup>th</sup> day of March, 2005.

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	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

Filed: March 15, 2005

Attest: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*