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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

Arizona Corporation Commission

DOCKETED

JUL 14 2004

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY [Signature]

IN THE MATTER OF THE APPLICATION OF
COMPUTER NETWORK TECHNOLOGY
CORPORATION FOR A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETITIVE FACILITIES-BASED LOCAL
EXCHANGE AND LONG DISTANCE
TELECOMMUNICATIONS SERVICES IN
ARIZONA.

DOCKET NO. T-04221A-03-0832

DECISION NO. 67123

OPINION AND ORDER

DATE OF HEARING: June 1, 2004
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Amanda Pope
APPEARANCES: Michael W. Patten, Roshka Heyman & DeWulf PLC, on behalf of Computer Network Technology Corporation; and
Maureen Scott, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

- 1. On November 17, 2003, Computer Network Technology Corporation ("CNTC" or "Applicant") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold local and interexchange and facilities-based local exchange telecommunications services within the State of Arizona. The application petitioned the Commission for determination that its proposed services should be classified as competitive.
- 2. By its application, CNTC indicated that it intends to provide private line special access service in conjunction with current data services and products to existing Arizona customers.

1 Furthermore, CNTC provided the affidavit of Gregory Barnum, Chief Financial Officer, in support of
2 its application, which indicates that CNTC will specialize in the provision of dedicated, private line
3 data communications circuits to business customers and will not offer switched voice grade services.

4 3. On March 9, 2004, the Commission's Utilities Division Staff ("Staff") filed its Staff
5 Report, which recommended approval of the application to provide resold local and interexchange
6 and facilities-based local exchange telecommunications services and included a number of additional
7 recommendations.

8 4. On March 11, 2004, a Procedural Order was issued setting this matter for hearing on
9 April 29, 2004 and setting various procedural deadlines.

10 5. On April 27, 2004, CNTC filed a letter requesting to amend its original application.
11 By its amendment, CNTC indicated that it will restrict its market participation to the provision of
12 private line point to point and point to multi-point high speed data services, which will be marketed
13 to existing customers of CNTC's data storage and management products and services. Furthermore,
14 CNTC indicated that at the present time, it will not be offering voice grade services and will not be
15 using the public switched telephone network.

16 6. On April 28, 2004, CNTC filed a Notice of Appearance and Request for Continuance
17 of Hearing, which indicates that it will be represented by Michael W. Patten and that CNTC failed to
18 publish notice of the hearing in accordance with the deadline set forth in the Procedural Order.

19 7. By Procedural Order dated April 28, 2004, CNTC's Request for Continuance was
20 granted, and the hearing was set for June 2, 2004.

21 8. On April 30, 2004, CNTC submitted a Request to Reschedule June 2, 2004 Hearing,
22 which was docketed on May 3, 2004, based upon the unavailability of counsel on that date.

23 9. By Procedural Order dated April 30, 2004, CNTC's Request to Reschedule was
24 granted, and the hearing was set for June 1, 2004.

25 10. On May 24, 2004, CNTC docketed an Affidavit of Publication that complies with
26 Commission rules.

27 11. On May 25, 2004, Staff filed an Amended Staff Report, which recommends approval
28 of CNTC's amended application to provide private line service subject to several conditions. -

1 12. On June 1, 2004, a full public hearing in this matter was held as scheduled. Mr.
2 Robert Fisher, Senior Vice President of CNTC, testified telephonically on behalf of CNTC and was
3 represented by counsel. Staff appeared and was represented by counsel. The hearing was conducted
4 before a duly authorized Administrative Law Judge.

5 13. Mr. Fisher testified that CNTC seeks authority to provide private line dedicated data
6 service to existing customers in the State of Arizona. Mr. Fisher further testified that it targets Global
7 2000 companies.

8 14. In its Amended Staff Report, Staff argues that the Commission has jurisdiction over
9 the private line services to be provided by CNTC. Specifically, Staff states that because private line
10 service, such as that to be offered by CNTC, provides a means by which customers may transmit and
11 receive messages and data among various customer locations over facilities operated and provided by
12 CNTC, it is engaged in providing telecommunications service for hire to the public. As such, Staff
13 argues that CNTC satisfies the definition of a telecommunications common carrier and a public
14 service corporation.

15 15. In its testimony and Amended Staff Report, Staff indicates that a number of incumbent
16 local exchange carriers and competitive local exchange carriers have been authorized to provide
17 private line service in conjunction with the authorization to provide other telecommunications
18 services.

19 16. The Amended Staff Report also indicates that interexchange carriers hold a substantial
20 share of the private line service market.

21 17. CNTC is incorporated under the laws of the State of Minnesota and is authorized to do
22 business in Arizona.

23 18. Applicant has the technical capability to provide the services that are proposed in its
24 amended application.

25 19. Currently there are several incumbent providers of private line service in the service
26 territory requested by Applicant, and numerous other entities have been authorized to provide private
27 line services in all or portions of that territory.

28 20. It is appropriate to classify all of Applicant's authorized services as competitive. =

1 21. The Amended Staff Report stated that Applicant has no market power and the
2 reasonableness of its rates would be evaluated in a market with numerous competitors.

3 22. According to Staff, CNTC submitted its audited financial statements for the twelve
4 month period ending January 31, 2004. These financial statements list assets in excess of \$412
5 million, total equity in excess of \$142 million, and a net loss in excess of \$24 million.

6 23. Staff recommends that CNTC's application, as amended, for a Certificate to provide
7 private line services be granted subject to the following conditions:

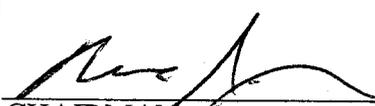
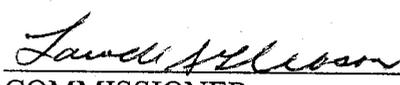
- 8 (a) that CNTC be ordered to abide by and participate in the AUSF mechanism
9 established in A.A.C. R14-2-1204(B)(3)(b);
- 10 (b) that CNTC be required to notify the Commission immediately upon changes to
11 its name, address or telephone number;
- 12 (c) that CNTC be ordered to comply with all Commission rules, orders, and other
13 requirements relevant to the provision of intrastate telecommunications
14 service;
- 15 (d) that CNTC be ordered to maintain its accounts and records as required by the
16 Commission;
- 17 (e) that CNTC be ordered to file with the Commission all financial and other
18 reports that the Commission may require, and in a form and at such times as
19 the Commission may designate;
- 20 (f) that CNTC be ordered to maintain on file with the Commission all current
21 tariffs and rates, and any service standards that the Commission may require;
- 22 (g) that CNTC be ordered to cooperate with Commission investigations including,
23 but not limited to, customer complaints;
- 24 (h) that CNTC be ordered to file an application with the Commission pursuant to
25 A.A.C R14-2-1107 if it desires to discontinue service. CNTC should be
26 required to notify each of its private line service customers and the
27 Commission 60 days prior to filing an application to discontinue service; and
- 28 (i) that CNTC be subject to the Commission's rules and the 1996
Telecommunications Act to the extent that they apply to Private Line Service
Carriers.

24 24. Staff further recommended that CNTC's amended application for a CC&N to provide
25 private line services should be granted subject to CNTC filing conforming tariffs for its CC&N to
26 provide private line service in accordance with this Decision within 365 days from this Decision or
27 30 days prior to providing service, whichever comes first.

1 IT IS FURTHER ORDERED that if Computer Network Technology Corporation fails to
2 notify each of its customers and the Commission at least 60 days prior to filing an application to
3 discontinue service pursuant to A.A.C. R14-2-1107, its Certificate of Convenience and Necessity
4 shall be deemed null and void.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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| CHAIRMAN | COMMISSIONER | COMMISSIONER |
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| COMMISSIONER | COMMISSIONER | |

12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
13 Secretary of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this 14th day of July, 2004.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

17 DISSENT _____
18 AP:mlj

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1 SERVICE LIST FOR: COMPUTER NETWORK TECHNOLOGY
2 CORPORATION

3 DOCKET NO.: T-04221A-03-0832

4 Michael W. Patten
5 Roshka Heyman & DeWulf PLC
6 One Arizona Center
7 400 East Van Buren Street, Suite 800
8 Phoenix, Arizona 85004

9 Robert K. Lock
10 Windfall Resources International, LLC
11 7144 North Harlem Ave., Suite 323
12 Chicago, Illinois 60631

13 Christopher Kempley, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, Arizona 85007

18 Ernest Johnson, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

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