

OPEN MEETING ITEM



0000003885

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

ORIGINAL



ARIZONA CORPORATION COMMISSION

RECEIVED  
2004 JUN 22 A 8:34  
AZ CORP COMMISSION  
DOCUMENT CONTROL

22

DATE: June 22, 2004  
DOCKET NO: T-04221A-03-0832  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Opinion and Order on:

COMPUTER NETWORK TECHNOLOGY CORPORATION  
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JULY 1, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 6 AND 7, 2004

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission  
**DOCKETED**

JUN 22 2004

DOCKETED BY

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

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. \_\_\_\_\_

**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           25.     At the hearing, CNTC agreed to comply with all of Staff's recommendations.

2           26.     In its Amended Staff Report, Staff stated that based on information obtained from the  
3 Applicant, it has determined that CNTC's fair value rate base is zero, and is too small to be useful in  
4 setting rates. Staff further stated that in general, rates for competitive services are not set according  
5 to rate of return regulation, but are heavily influenced by the market. Staff recommended that while  
6 it considered the fair value rate base information, it did not believe the information deserved  
7 substantial weight in setting rates for CNTC.  
8

9           27.     The rates to be ultimately charged by CNTC will be heavily influenced by the market.  
10 Because of the nature of the competitive market and other factors, a fair value analysis is not  
11 necessarily representative of the company's operations.  
12

13           28.     Staff stated that CNTC lacks the market power to adversely affect the  
14 telecommunications market by either restricting output or raising prices. Also, Staff has  
15 recommended that CNTC's services be classified as competitive and thus subject to the flexible  
16 pricing authority allowed by the Commission's Competitive Telecommunications Services rules.  
17 Staff believes that these two factors, lack of market power and the competitive marketplace for the  
18 services CNTC proposes to offer, support the conclusion that a fair value analysis is not necessarily  
19 representative of the company's operations, and that the rates charged by CNTC will be reasonable.  
20

21           29.     CNTC's fair value rate base is determined to be zero for purposes of this proceeding.  
22

### CONCLUSIONS OF LAW

23           1.     Applicant is a public service corporation within the meaning of Article XV of the  
24 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

25           2.     The Commission has jurisdiction over Applicant and the subject matter of the  
26 application.

27           3.     Notice of the application was given in accordance with the law.  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

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

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_  
AP:mlj

1 SERVICE LIST FOR:

COMPUTER NETWORK TECHNOLOGY  
CORPORATION

2

3 DOCKET NO.:

T-04221A-03-0832

4

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

7

8

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

10

11

Christopher Kempley, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

13

14

Ernest Johnson, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

16

17

18

19

20

21

22

23

24

25

26

27

28