

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. XM-2005-0283

From: Lisa Mahaney, Telecommunications Department
William Voight 3/16/05 William K. Haas 3/16/05
Utility Operations Division/Date General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
Competitive Company Transaction**

Date: 3/16/05

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- ☒ **Approve Merger** ☐ **Approve Consolidation** ☐ **Approve Sale of Assets**
- ☐ **Approve Name Change**
- ☐ **Cancel Certificate(s) & Tariff(s)** ☐ **Approve Certificate(s) & Tariff(s)**

According to Commission rules, competitively classified companies are required to provide minimal information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest. This transaction solely involves competitively classified companies and is not detrimental to the public interest since a customer has/will receive advance notice and can freely switch to another provider. The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
Computer Network Technology Corporation	X	X							
Condor Acquisition Inc., a subsidiary of McDATA Corporation									

*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

Appendix A

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

☒ No

☐ Yes

Staff has no objections to waiving 4 CSR 240-33.150 for this transaction as long as affected customers are notified of the transaction.

☐ Customers have been notified and a copy of the notification is attached to this Staff Recommendation.

☐ Any waiver granted for 4 CSR 240-33.150 should be conditioned upon customers being notified.

Company Name Change Notification

☐ Company has notified its customers of the name change. A copy of the customer notice is attached.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

Competitive Company Transaction Review Items**Administrative:**

☒ Application solely involves competitively classified companies.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☒ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☒ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.

If business conducted under a fictitious name: A copy of registration of the fictitious name.

☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).

☒ A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations?

☐ No

☒ Yes

If yes, explain in an attachment.

☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

Attachment to Staff Recommendation

Is this transaction requesting the granting of certificates and approval of tariffs? ☒ No ☐ Yes
(If yes, see below. Attach additional sheets, if necessary.)

Applicant:

The applicant has met Staff's review of requirements for obtaining a certificate of service authority and tariff approval. Therefore, Staff recommends the applicant be granted the following certificate(s), as indicated below. The certificate shall be conditioned to become effective on the same date the tariff becomes effective; however no later than the approval date of the transaction involving the competitively classified companies.

☐ certificate to provide basic local exchange telecommunications services. Granting the certificate should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.
4. ☐ (Check, if applicable) Grant the request for waiver of 4 CSR 3.510(1)(C), which requires the filing of a tariff with an effective date not fewer than 45 days from the issue date. The applicant cannot lawfully provide service until tariffs are effective.

☐ certificate to provide interexchange telecommunications services.

☐ certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

☐ No objection to tariff taking effect _____ (indicate PSC MO numbers)
_____ Effective Date

Staff recommends the applicant and its services receive competitive classification. In addition, Staff recommends approval of the waivers normally granted to competitively classified companies (392.210.2, 392.240.1, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, 392.340, 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-3.550(5)(C) (this last rule only applies to companies providing basic local telecommunications service).

Certificate applications, if applicable:

- ☐ Statement of character of business performed.
- ☐ Application includes an affidavit.
- ☐ Applicant seeks waivers of rules or statutes previously granted to a competitively classified company.
- ☐ Applicant shows that grant of authority is in the public interest.

Additional review items for CLEC applications, if applicable:

- ☐ Possesses sufficient technical, financial and managerial resources and abilities.
- ☐ Identifies geographic area (no smaller than an exchange).
- ☐ Statement that applicant will offer basic local service as a separate and distinct service.
- ☐ Statement that applicant will give equitable access to all Missourians.

Tariff review items (applicable for all competitively classified companies):

- ☐ Properly formatted: (Company name, PSC MO No., Page #, Page revision #, proposed effective date)
- ☐ Identifies competitive classification.
- ☐ Identifies waivers granted.
- ☐ ICB pricing, if proposed, limited for private line, special access or Centrex-like services. (392.200(8)).
- ☐ Proposed rates do not establish geographic deaveraged rates (if not checked, explain in attachment). (392.200(4)).
- ☐ If an alternative operator service provider (receives more than 40% of revenues from traffic aggregators) operator service rates do not exceed: Person-to-Person (\$10.00), Station-to-Station/card (\$5.50). (392.515(1))
- ☐ If increasing rates, potentially affected customers have been provided with written notification at least 10 days in advance.

Tariff review items (applicable only for CLECs):

- ☐ Interconnection agreement approved (if not checked, explain in attachment)
- ☐ Tariff clearly indicates areas offering local service area
(____SWB, ____Verizon, ____Sprint, ____Spectra, ____Other.)
- ☐ Tariff offers local service as a separate and distinct service.
- ☐ Switched access service rates capped at ILEC's rates.

Attachment to XM-2005-0283
March 16, 2005

This merger is between Computer Network Technology Corporation and Condor Acquisition, Inc, a subsidiary of McDATA Corporation. Condor Acquisition, Inc., will cease to exist and Computer Network Technology Corporation will be the surviving corporation. The transaction will not be detrimental to the public, since it will be transparent and have no effect on customers of Computer Network Technology Corporation.