

# NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW  
MONROE BLUFF EXECUTIVE CENTER  
601 MONROE STREET, SUITE 301  
P.O. BOX 537  
JEFFERSON CITY, MISSOURI 65102-0537  
www.ncrpc.com

TELEPHONE: (573) 634-2266  
FACSIMILE: (573) 636-3306

ROBERT K. ANGSTEAD  
ROBERT J. BRUNDAGE  
MARK W. COMLEY  
CATHLEEN A. MARTIN  
STEPHEN G. NEWMAN  
JOHN A. RUTH

February 18, 2005

FILED<sup>3</sup>

FEB 18 2005

Missouri Public  
Service Commission

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Re: Computer Network Technology Corporation

Dear Judge Roberts:

Please find enclosed for filing in the referenced matter the original and five copies of an Application.

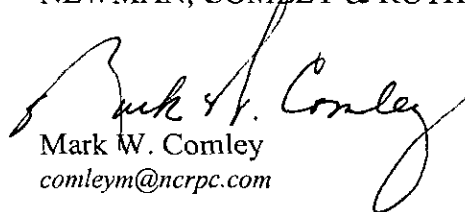
Would you please bring this filing to the attention of the appropriate Commission personnel.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:

  
Mark W. Comley  
comleym@ncrpc.com

MWC:ab  
Enclosure

cc: Office of Public Counsel  
General Counsel's Office  
Brian McDermott

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

**FILED**<sup>3</sup>

FEB 18 2005

Missouri Public  
Service Commission

Application of Computer Network Technology )  
Corporation for authority to enter a Merger )  
and Transfer of Control Transaction )  
with Condor Acquisition, Inc., and McDATA )  
Corporation and their respective Subsidiaries )

**APPLICATION**

Come now Computer Network Technology Corporation ("CNT" or Applicant), by its attorneys, and pursuant to §392.300, RSMo, hereby applies for and requests approval of a transaction whereby McDATA Corporation ("McDATA") will acquire control of CNT through a merger of Condor Acquisition, Inc. ("Condor"), McDATA's wholly-owned subsidiary, and CNT ("Transaction").<sup>1</sup> In support of this request, Applicant and the Parties state as follows:

**A. Computer Network Technology Corporation**

1. CNT is a corporation organized under the laws of the State of Minnesota and is registered as a foreign corporation in good standing in Missouri. CNT's certificates of good standing from the Secretary of States of Minnesota and Missouri, along with a certificate of authority from the Missouri Secretary of State, are attached hereto as Exhibit A.

2. CNT's address is:

Computer Network Technology Corporation  
6000 Nathan Lane North  
Minneapolis, Minnesota 55442.

3. CNT is publicly traded on the Nasdaq National Market System under the symbol "CMNT." In Missouri, CNT is authorized to provide intrastate interexchange and non-switched local exchange telecommunications services, granted by the Commission on August 11, 2004 in Case No. XA-2005-0015. CNT operations and its customers in Missouri will be unaffected by the Transaction. After the consummation of the Transaction, CNT will retain its authorization

---

<sup>1</sup> Applicant, Condor and McData are sometimes referred to collectively herein as "the Parties."

and will continue to provide services to its customers. Further information concerning CNT's legal, technical, managerial and financial qualifications to provide service was submitted with its application with the Commission and is, therefore, a matter of public record. CNT respectfully requests that the Commission take official notice of that information and incorporate it herein by reference. Additional information on CNT is available on the company's website at [www.cnt.com](http://www.cnt.com).

**B. Condor Acquisition, Inc.**

4. Condor is a newly formed Minnesota corporation established to effect the merger of CNT. Condor's principal offices are located at:

Condor Acquisition, Inc.  
380 Interlocken Crescent  
Broomfield, Colorado 80021.

5. Condor is a wholly owned subsidiary of McDATA Corporation. Condor is not authorized to provide telecommunication services in any state.

**C. McDATA Corporation**

6. McDATA is a Delaware corporation with principal offices located at:

McDATA Corporation  
380 Interlocken Crescent  
Bloomfield, Colorado 80021.

7. McDATA is publicly traded on the Nasdaq National Market System. McDATA's Class A common shares are traded under the symbol "MCDTA" and its Class B common shares are traded under the symbol "MCDT." Neither McDATA nor any of its subsidiaries have any licenses relating to the provision of telecommunications services. McDATA's revenue from the twelve months ending January 31, 2004 was \$418.9 million and for the quarter ending October 31, 2005 was \$98.5 million. McDATA is financially qualified to acquire control of CNT.<sup>2</sup> Additional information on McDATA is available on the company's website at [www.mcdata.com](http://www.mcdata.com).

---

<sup>2</sup> The most recent SEC Form 10-Q of McDATA Corporation is available upon request.

**D. Contact Information.**

8. Communications and correspondence pertaining to this application should be addressed to:

Mark W. Comley  
Newman, Comley & Ruth P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, Missouri 65102  
(573) 634-2266 (Telephone)  
(573) 636-3306 (FAX)  
comleym@ncrpc.com

and

William B. Wilhelm, Jr.  
Brian McDermott  
Joshua S. Lamel  
Swidler Berlin LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007-5116  
(202) 424-7500 (Telephone)  
(202) 424-7645 (FAX)

**E. Description of the Transaction**

9. The Parties have entered into an Agreement and Plan of Merger dated as of January 17, 2005 ("Merger Agreement")<sup>3</sup> 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 (CNT) will become a wholly owned subsidiary of McDATA. Upon completion of the transaction, current McDATA and CNT stockholders will own approximately 76% and 24%, respectively, of McDATA. Attached as Exhibit B is an illustrative chart describing the proposed Transaction.

10. Following the consummation of the Transaction, CNT's customers will continue to

---

<sup>3</sup> A copy of the Merger Agreement will be provided upon request.

receive service under the same rates, terms and conditions of service as before. CNT will become a wholly owned subsidiary of McDATA, will continue to operate and provide services to CNT's customers and will retain the assets used in the provisions of those services. As a result, the proposed Transaction will not involve a change in CNT's operating authority in Missouri and CNT's tariffs will remain in effect. The Transaction will be virtually transparent to CNT's customers in terms of the services they receive.

#### **F. Public Interest Considerations**

11. The Parties respectfully submit that the proposed Transaction serves the public interest. In particular, the Parties submit that: (1) the Transaction will increase competition in the Missouri 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.

12. The proposed Transaction is expected to facilitate competition in Missouri by improving the operational position of both CNT and McDATA. 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. Moreover, given that the Transaction will not affect CNT's rates, terms and conditions of services, the Transaction will have no negative effects on customers.

13. CNT does not have any pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court that involve customer service or customer rates, which action, judgment or decision has occurred within three (3) years of the date of this Application

14. No annual reports or fees are overdue from CNT.

15. The parties hope to close the transaction described as soon as possible after receipt of necessary approvals.

WHEREFORE, Computer Network Technology Corporation respectfully requests that

the Commission grant the authority to effect the Transaction described in the foregoing application, and enter such other orders and further relief the Commission deems appropriate.

Respectfully submitted,

**Computer Network Technology Corporation**

By:



Mark W. Comley, MO Bar #28847  
Newman, Comley & Ruth P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102  
(573) 634-2266  
(573) 636-3306 FAX

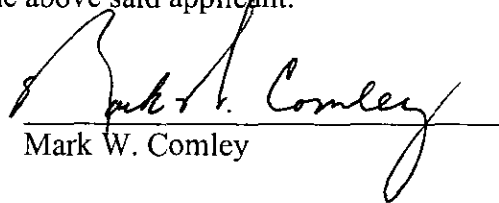
William B. Wilhelm, Jr.  
Brian McDermott  
Joshua S. Lamel  
SWIDLER BERLIN LLP  
3000 K Street, N.W., Suite 300  
Washington, D.C. 20007-5116  
(202) 424-7500  
(202) 424-7645 (FAX)

**Its Attorneys**

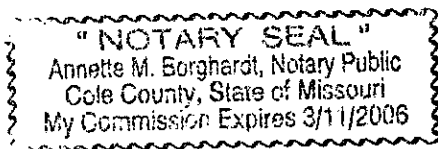
ATTORNEY VERIFICATION

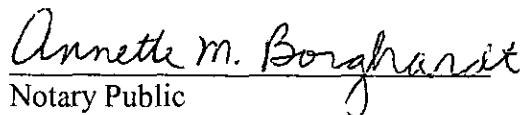
STATE OF MISSOURI     )  
                                  ) ss.  
COUNTY OF COLE     )

I, Mark W. Comley, being first duly sworn, do hereby certify, depose and state that I am the attorney for Computer Network Technology Corporation, applicant in this proceeding; that I have read the above and foregoing Application and the allegations therein contained are true and correct to the best of my knowledge, information and belief; and I further state that I am authorized to verify the foregoing application by the above said applicant.

  
Mark W. Comley

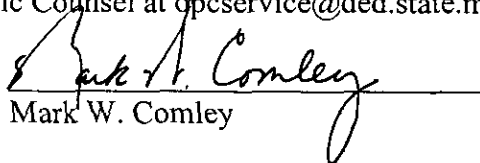
Subscribed and sworn to before me, a Notary Public, this 18<sup>th</sup> day of February, 2005.



  
Notary Public

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent via e-mail on this 18<sup>th</sup> day of February, 2005, to General Counsel's Office at [gencounsel@psc.state.mo.us](mailto:gencounsel@psc.state.mo.us); Office of Public Counsel at [opcservice@ded.state.mo.us](mailto:opcservice@ded.state.mo.us).

  
Mark W. Comley

## **EXHIBIT A**

### **Certificates of Good Standing from the States of Minnesota and Missouri**

#### **Missouri Certificate of Authority**



State of Minnesota

## SECRETARY OF STATE

### Certificate of Good Standing

I, Joan Anderson Growe, Secretary of State of Minnesota, do certify that: The corporation listed below is a corporation formed under the laws of Minnesota; that the corporation was formed by the filing of Articles of Incorporation with the Office of the Secretary of State on the date listed below; that the corporation is governed by the chapter of Minnesota Statutes listed below; and that this corporation is authorized to do business as a corporation at the time this certificate is issued.

Name: Computer Network Technology Corporation

Date Formed: 07/11/1979

Chapter Governed By: 302A

This certificate has been issued on 07/26/90.



*Joan Anderson Growe*  
Secretary of State.

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

**COMPUTER NETWORK TECHNOLOGY CORPORATION**

using in Missouri the name

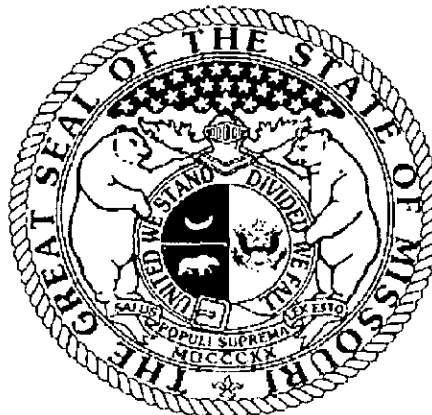
**COMPUTER NETWORK TECHNOLOGY CORPORATION**  
**F00343798**

a MINNESOTA entity was created under the laws of this State on the 15th day of August, 1990, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 6th day of January, 2005

*Matt Blunt*

Secretary of State



# STATE OF MISSOURI



ROY D. BLUNT

SECRETARY OF STATE

CORPORATION DIVISION - CERTIFICATE OF AUTHORITY

WHEREAS,  
COMPUTER NETWORK TECHNOLOGY CORPORATION

USING IN MISSOURI THE NAME  
COMPUTER NETWORK TECHNOLOGY CORPORATION

HAS COMPLIED WITH THE GENERAL AND BUSINESS CORPORATION LAW WHICH GOVERNS FOREIGN CORPORATIONS; BY FILING IN THE OFFICE OF THE SECRETARY OF STATE OF MISSOURI AUTHENTICATED EVIDENCE OF ITS INCORPORATION AND GOOD STANDING UNDER THE LAWS OF THE STATE OF MINNESOTA.

NOW, THEREFORE, I, ROY D. BLUNT, SECRETARY OF STATE OF THE STATE OF MISSOURI, DO HEREBY CERTIFY THAT SAID CORPORATION IS FROM THIS DATE DULY AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE, AND IS ENTITLED TO ALL RIGHTS AND PRIVILEGES GRANTED TO FOREIGN CORPORATIONS UNDER THE GENERAL AND BUSINESS CORPORATION LAW OF MISSOURI.

IN TESTIMONY WHEREOF, I HAVE SET MY  
HAND AND IMPRINTED THE GREAT SEAL OF  
THE STATE OF MISSOURI, ON THIS, THE  
15TH DAY OF AUGUST, 1990.

  
Secretary of State

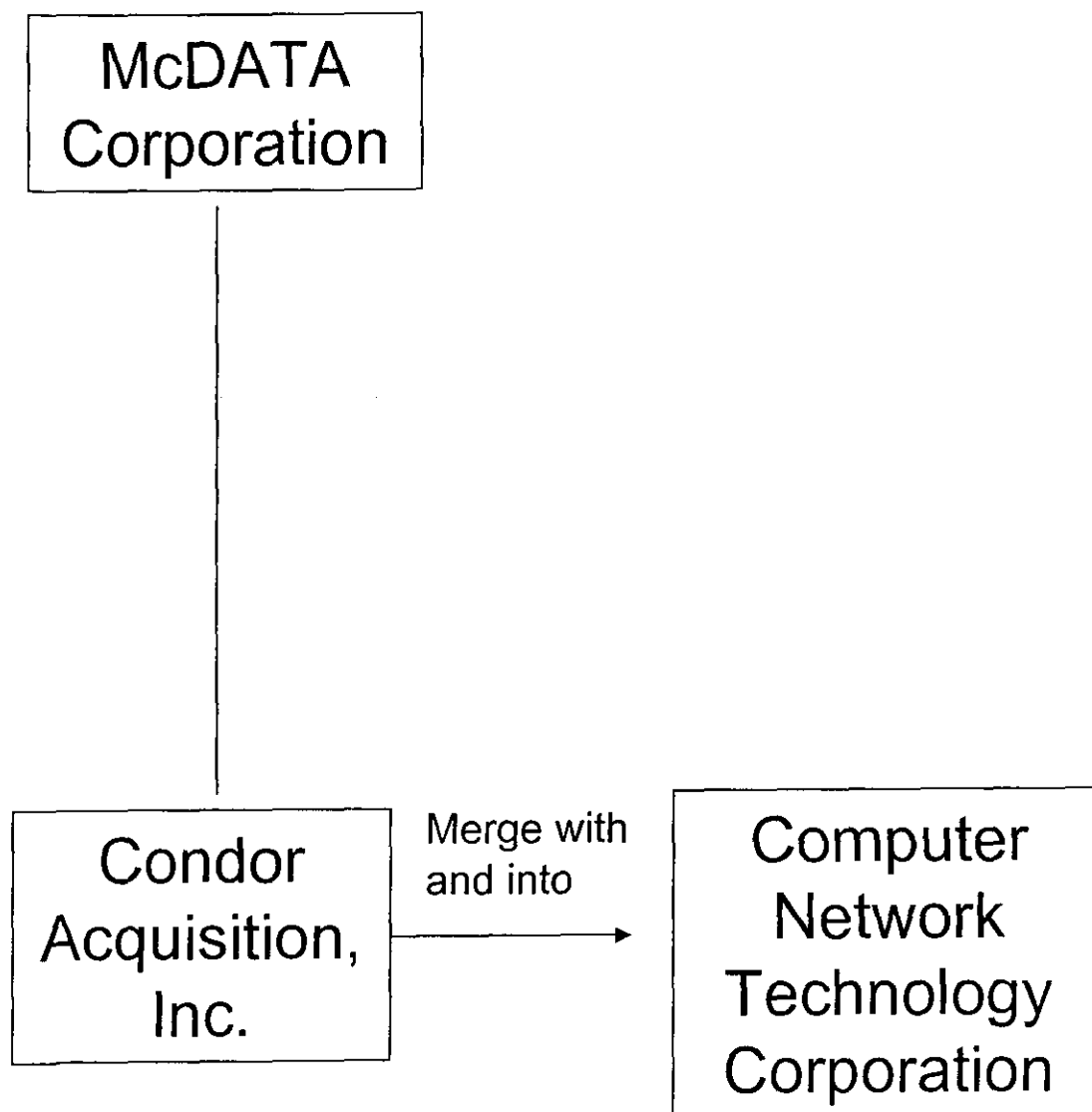
\$60.00



## **EXHIBIT B**

### **Illustrative Chart**

## Pre-Transaction



## Post-Transaction

