

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
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November 13, 2018

Agenda ID #17023
Alternate to Agenda ID#16614
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 17-09-007:

Enclosed is the Alternate Proposed Decision of Commissioner Randolph to the Proposed Decision of Administrative Law Judge (ALJ) Kline previously mailed to you. This cover letter explains the comment and review period and provides a digest of the alternate decision.

When the Commission acts on this agenda item, it may adopt all or part of it as written, amend or modify it, or set aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Public Utilities Code Section 311(e) requires that an alternate to a proposed decision or to a decision subject to subdivision (g) be served on all parties, and be subject to public review and comment prior to a vote of the Commission.

Parties to the proceeding may file comments on the alternate proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3 opening comments shall not exceed 15 pages.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Kline at zk1@cpuc.ca.gov and Commissioner Randolph's advisor, Lester Wong, at lj@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANNE E. SIMONAnne E. Simon
Chief Administrative Law Judge

AES:mph

Attachment

**DIGEST OF DIFFERENCES BETWEEN
ADMINISTRATIVE LAW JUDGE KLINE'S PROPOSED DECISION
AND THE ALTERNATE PROPOSED DECISION
OF COMMISSIONER RANDOLPH**

Pursuant to Public Utilities Code Section 311(e), this is the digest of the substantive differences between the proposed decision of Administrative Law Judge (ALJ) Kline (mailed on 6/20/2018) and the alternate proposed decision of Commissioner Randolph (mailed on 11/13/2018).

The alternate proposed decision (PD) of Commissioner Randolph differs from the ALJ PD in that it grants the Application of Bandwidth.com CLEC, LLC (Bandwidth CLEC) for transfer of control of their Certificate of Public Convenience and Necessity (CPCN) to David A. Morken. The ALJ PD denies the transfer of control, jointly fines Bandwidth CLEC and Bandwidth Incorporated (Bandwidth) \$5,000. If Bandwidth applies for a CPCN to operate as a public utility providing telecommunications services in the State of California within ninety days of the date of the ALJ's PD, Bandwidth CLEC's CPCN will remain effective through the duration of Bandwidth's application.

ALTERNATE PROPOSED DECISION

Agenda ID# 17023
Alternate to Agenda ID #16614
Ratesetting

Decision **ALTERNATE PROPOSED DECISION OF COMMISSIONER
RANDOLPH (Mailed 11/13/2018)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Bandwidth.com CLEC, LLC (U7038C) for
Approval to Transfer Control of
Bandwidth.com CLEC, LLC to David A.
Morken Pursuant to California Public
Utilities Code Section 854(a).

Application 17-09-007

DECISION AUTHORIZING TRANSFER OF CONTROL

Summary

This decision grants the unopposed application of Bandwidth.com CLEC, LLC (U-7038-C) (Bandwidth CLEC) to the transfer of indirect control of Bandwidth CLEC to David A. Morken pursuant to Section 854 of the California Public Utilities Code.

1. Factual Background

Bandwidth.com CLEC, LLC (Bandwidth CLEC) (U7038C) is a Delaware Limited Liability Company authorized to do business in California. It is headquartered at 900 Main Campus Drive, Suite 500, Raleigh, North Carolina 27606. On September 20, 2007, the Commission issued Decision (D.) 07-09-035, which granted Bandwidth CLEC a certificate of public convenience and necessity (CPCN) to provide limited facilities-based and resold competitive local exchange and interexchange services.

Bandwidth Incorporated (Bandwidth Inc.) (U-1362-C), formerly known as Bandwidth.com Incorporated,¹ is a corporation organized under the laws of Delaware, and headquartered at 900 Main Campus Drive, Suite 500, Raleigh, North Carolina 27606. Bandwidth Inc. has been registered with the Commission to provide VoIP services since May 20, 2015. Bandwidth Inc. was formerly registered in California as a reseller of wireless services, but withdrew its registration by advice letter, effective October 16, 2017.² Bandwidth CLEC is solely owned and managed by Bandwidth Inc.

David A. Morken, an individual, is the co-founder, chief executive officer and chairman of Bandwidth Inc. His business address is 900 Main Campus Drive, Suite 500, Raleigh, North Carolina 27606.

On August 16, 2017, Bandwidth filed a registration statement on Form S-1 with the Securities and Exchange Commission for an initial public offering (IPO) of Bandwidth Inc. David A. Morken is expected to obtain a majority of the voting power of the outstanding stock of Bandwidth Inc. through a post-IPO stock restructuring. As a result, David A. Morken will control Bandwidth Inc. and will indirectly control Bandwidth CLEC.³ Appendix A of this order shows the pre- and post-transaction corporate structure.⁴

¹ On September 15, 2017, Bandwidth.com Incorporated changed its legal name to Bandwidth, Incorporated. (Nov. 1, 2017 Response to Administrative Law Judge (ALJ) Inquiry at p. 1, fn. 2.)

² April 19, 2018 Response to ALJ Ruling, at p. 5, fn. 17.

³ Nov. 1, 2017 Response to ALJ Inquiry at pp. 3-4.

⁴ From Exhibit B of Sept. 13, 2017 Application.

2. Procedural Background

On September 13, 2017, Bandwidth CLEC filed Application (A.) 17-09-007, requesting authorization to transfer indirect control of Bandwidth CLEC to David A. Morken pursuant to Public Utilities Code section 854(a). No parties protested or responded to the Application.

David A. Morken and Bandwidth Inc. became parties to the proceeding in response to ALJ rulings issued on October 16, 2017 and October 23, 2017, which required joinder pursuant to Rule 3.6 of the Commission's pursuant to Public Utilities (Pub. Util.) Code § 854(a).⁵ The October 23 ruling (ALJ Inquiry) also required additional information.

On October 30, 2017, the assigned ALJ held a telephonic prehearing conference (PHC) to determine parties, and to discuss the scope, schedule and other procedural matters. Bandwidth CLEC and David A. Morken appeared at the PHC. On November 1, 2017, Bandwidth CLEC and David A. Morken submitted additional information in response to the October 23 ALJ Inquiry. In statements made at the PHC and in its November 1, 2017 response, Bandwidth CLEC indicated that it has no officers or directors. Bandwidth CLEC's sole member and manager is Bandwidth Inc.⁶

The assigned Commissioner issued a scoping memo and ruling (scoping memo) on November 17, 2017. The scoping memo determined the following issues to be within the scope of this proceeding:

⁵ Parties to this proceeding include Bandwidth CLEC, Bandwidth Inc. and David A. Morken; hereinafter Joint Parties.

⁶ Prehearing Conference RT 4:17-20; Nov. 1, 2017 response to ALJ Inquiry at p. 3.

Does the Application meet all Commission requirements such that the Commission should grant authorization to transfer control of Bandwidth CLEC from Bandwidth CLEC to Bandwidth, including compliance with Pub. Util. Code § 854 and Rule 3.6?

Does the Application meet all Commission requirements such that the Commission should grant authorization to transfer control of Bandwidth CLEC from Bandwidth to David A. Morken, including compliance with Pub. Util. Code § 854 and Rule 3.6?

The first issue posed by the scoping memo reflected the direct transfer of managerial authority of Bandwidth CLEC to Bandwidth Inc. (as indicated by Bandwidth CLEC's statement that Bandwidth CLEC had no officers and directors and was solely managed by Bandwidth's officers and directors). The second issue reflected the indirect transfer of managerial control of Bandwidth to David A. Morken as proposed in the Application.

On January 31, 2018, the assigned ALJ issued an Order to Show Cause directing applicants to explain why the Commission should not find (1) a rule 1 violation for Bandwidth CLEC's misrepresentation of its managerial qualifications in A.07-03-020 where Bandwidth CLEC represented Bandwidth's management as its own and (2) Bandwidth's operation without a license for failure to request a transfer of control pursuant to Pub. Util. Code § 854(a). The Order to Show Cause also required the Joint Applicants to amend their Application within 60 days to reflect the two transfers of authority set as issues in the scoping memo.⁷ On February 27, 2018, the Joint Parties filed their Response to the Order to Show Cause, in which the Joint Parties objected to amending the

⁷ Jan. 31, 2018 Order to Show Cause and Ruling Requiring the Joint Applicants to Amend the Application.

Application. In the Response to the Order to Show Cause, the Joint Parties provided evidence showing that Bandwidth also had operational control of Bandwidth CLEC from the company's inception, indicating that Bandwidth CLEC also failed to meet its obligation to operate within a year of the issuance of its CPCN pursuant to D.07-09-035.

On March 14, 2018, the assigned ALJ set a status conference for March 30, 2018 and suspended the Joint Parties' requirement to submit an amended Application by ruling.⁸ On March 30, 2018, the Joint Parties and the assigned ALJ discussed options for the Joint Parties in the proceeding on assumption that that Bandwidth CLEC never operated or managed the telecommunications services provided pursuant to its CPCN. The options provided to the Joint Parties in order to allow Bandwidth to operate and manage the telecommunications services which had been provided under Bandwidth CLEC's CPCN included (1) revoking Bandwidth CLEC's CPCN and allowing the Joint Parties leave to amend the Application to allow Bandwidth to apply for a CPCN within this proceeding and (2) revoking Bandwidth CLEC's CPCN in this proceeding and allowing Bandwidth to submit an application for a CPCN in a separate application.

The Joint Parties pointed out that Bandwidth CLEC is a Limited Liability Company (LLC) and as such it is not required under corporate law to have officers and directors. However, the Joint Parties offered to install officers and directors in Bandwidth CLEC in response to the ALJ's concerns.⁹ The assigned

⁸ ALJ's Ruling Setting Status Conference and Suspending Deadline to Amend Application at pp. 2-3.

⁹ Status Conference RT 21:8-17.

ALJ considered the option and stated that a revised ruling would be issued which would provide more guidance on moving the proceeding forward if Bandwidth CLEC installed officers and directors.¹⁰

On April 13, 2018, the assigned ALJ issued the ALJ Ruling requiring Bandwidth to cease providing telecommunications services, in addition to installing officers and directors at Bandwidth CLEC, to cure CPCN violations under the third option proposed by both parties. On April 19, 2018, the Joint Parties filed a response to the ALJ Ruling, wherein the Joint Parties: stated they had installed officers and a director in Bandwidth CLEC; denied the operation of telecommunications services by Bandwidth Inc. (as opposed to Bandwidth CLEC); requested the Commission approve the proposed transfer of control in the Application by Commission decision at the May 31, 2018 Commission meeting; and requested review of any potential violations of the Commission's rules or orders in a second phase of the proceeding.¹¹ On June 4, 2018, the parties jointly requested the assigned ALJ to schedule a status conference by motion.

There is no dispute that David A. Morken will be acquiring majority voting power and control of Bandwidth Inc., and will indirectly acquire control of Bandwidth CLEC. The authority requested by Joint Parties is to transfer the voting shares of Bandwidth Inc. to David A. Morken. Since Bandwidth CLEC's parent company is Bandwidth Inc., David A. Morken will acquire indirect control of Bandwidth CLEC. (See Appendix A.)

¹⁰ Status Conference RT 21:19-24.

¹¹ April 19, 2018 Response to ALJ Ruling.

Further, as stated above, Bandwidth Inc. installed officers and a director of Bandwidth CLEC on April 18, 2018.¹²

First, as Joint Parties pointed out, an LLC is not required to have officers or employees. Assuming a CLEC is required to have its own officers under the Commission's rules, Bandwidth has addressed that issue.

We also point out that Bandwidth CLEC is operating as a CLEC. Bandwidth Inc. has employees that work on CLEC matters, even if not technically employed by the CLEC. There is no prohibition on parent companies providing services for their regulated entities.

As stated by Bandwidth, Bandwidth CLEC's day-to-day operations are as follows:

Bandwidth.com CLEC, LLC has entered into interconnection agreements (ICAs) with incumbent local exchange carriers (ILECS) that are approved by the State public utilities commissions in all continental states. Bandwidth.com, CLEC also obtains telephone numbering resources from the North American Numbering Authority based on its CLEC status and the ability to enable traffic exchange in rate centers in the [Public Switched Telephone Network] in accordance with its ICAs. Bandwidth Inc. acts as a customer of Bandwidth.com CLEC, LLC's local exchange telecommunications services to support Bandwidth Inc.'s suite of services that utilize NANP telephone number for the exchange of VoIP Traffic on Bandwidth's all IP-enabled interstate network on behalf of Bandwidth's customers and their customers.¹³

¹² April 19, 2018 Response to ALJ Ruling, at p. 1.

¹³ Response to Order to Show Cause, Exhibit 1, Declaration of Scott Mullin, Chief Technology Officer of Bandwidth, at pp. 1-2.)

Finally, we have permitted CLECs to rely on the technical and managerial qualifications of a parent management company.¹⁴ Thus, we do not see any issue with Bandwidth CLEC's 2007 application for a CPCN.¹⁵

3. Description of the Proposed Transaction

As stated above, on August 16, 2017, Bandwidth filed a registration statement on Form S-1 with the Securities and Exchange Commission for an initial public offering (IPO) of Bandwidth Inc. The planned IPO includes a restructuring of stock in which Bandwidth Inc. anticipates that David A. Morken will obtain a majority of the voting power of the outstanding Bandwidth Inc. stock. As a result, Mr. Morken will control Bandwidth Inc, and indirectly, Bandwidth CLEC. The IPO is not expected to result in any new equity owners of Bandwidth that will hold more than 10 percent of Bandwidth CLEC. As a result of the restructuring of stock planned as part of the IPO, Bandwidth anticipates that the voting power of shares as well as the equity interest beneficially held by some of the current owners will be diluted.¹⁶

The operations of Bandwidth CLEC and Bandwidth Inc. will remain the same. The only change is that Mr. Morken will control Bandwidth Inc. and will indirectly control Bandwidth CLEC, as shown on the figures in Appendix A.

¹⁴ See, e.g., D.05-10-039, *Application for Expedited Approval of Transfer of Assets and CPCN of Seren Innovations, Inc. to WaveDivision Holdings, LLC*, at pp. 3-4.

¹⁵ D.07-09-035, *Application of Bandwidth CLEC for a CPCN*, filed March 19, 2007.

¹⁶ *Application for Approval to Transfer Control of Bandwidth CLEC, LLC to David A. Morken*, filed Nov. 13, 2017.

4. Jurisdiction

Public Utilities Code section 851 et seq. provides broad Commission authority to approve transfers of control which involve public utilities operating within California, as is requested in this proceeding. Section 854(a), which is applicable here,¹⁷ states:

No person or corporation, whether or not organized under the laws of this state, shall merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state without first securing authorization to do so from this Commission. The Commission may establish by order or rule the definitions of what constitute merger, acquisition, or control activities that are subject to this section of the statute.

After the transfer of control is completed, the Commission will retain the same regulatory authority over the Applicants that it currently possesses.

5. Standard of Review

Applicants seek approval of the transaction pursuant to Public Utilities Code section 854(a), which requires Commission-authorization before a public utility company may “merge, acquire, or control either directly or indirectly any public utility organized and doing business in this state....” The purpose of this and related code sections is to enable the Commission, before any transfer of public utility authority is consummated, to review the proposal and to take such action, as a condition of the transfer, as the public interest may require.¹⁸ Absent

¹⁷ Pub. Util. Code § 854(a). Pub Util. Code §§ 854 (b) and (c) are not applicable to this proceeding because neither Bandwidth CLEC, Bandwidth Inc., nor David A. Morken has gross annual California revenues in excess of \$500 million.

¹⁸ See *San Jose Water Co.* (1916) 10 CRC 56.

prior Commission approval, section 854(a) provides that the transaction is “void and of no effect.”

The Commission has broad discretion under section 854(a) to approve or reject a proposed transaction. If necessary and appropriate, the Commission may attach conditions to approval of a transaction to protect and promote the public interest. The primary question in a transfer of control proceeding under section § 854(a) is whether the transaction will be in the public interest. When the acquiring individual or company which does not have a CPCN seeks to acquire control of a company that possesses a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking the type of CPCN held by the company being acquired.

6. CPCN Requirements

In a transfer of authority, the prospective owner must satisfy requirements for a CPCN. The two major criteria are financial resources and managerial and technical expertise.

Because Bandwidth CLEC is a limited facilities-based carrier, it is required to have \$100,000 cash or cash equivalent, with sufficient reserves to meet any carriers deposit. Bandwidth has demonstrated that it meets this requirement.¹⁹ In any event, because Bandwidth CLEC is continuing the same services it currently provides, Bandwidth CLEC does not expect to be required to provide any such deposits in the future.²⁰

¹⁹ See Exhibit C to Sept. 13, 2017 Application (filed under seal).

²⁰ Sept. 13, 2017 Application at p. 6.

Joint Applicants have included resumes of Mr. Morken, as well as key officers that have been newly named for Bandwidth CLEC. These resumes demonstrate extensive experience and expertise in the telecommunication industry. Moreover, as the co-founder, Chief Executive Officer, and Chairman of Bandwidth Inc., Mr. Morken is well-qualified to obtain control of Bandwidth CLEC.

D.13-05-035 requires a certification/verification that neither the applicant nor any of its affiliates, officers, directors, partners, agents, or owners of more than 10 percent ownership or acting in a management capacity has, among other things, filed for bankruptcy, been found liable for misrepresentations to consumers, or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general. Applicants have provided such verification.²¹

Joint Applicants have thus satisfied the applicable requirements relating to the transfer of a telecommunications CPCN.

7. Approval of the Transaction

We conclude that the proposed transaction should be approved. The transaction is in the public interest. The IPO is expected to provide Bandwidth Inc. with a new infusion of capital and greater flexibility for corporate and financial transactions. This, in turn, will allow Bandwidth Inc. to be a stronger competitor. The IPO will not affect the technical or managerial qualifications of Bandwidth CLEC, which will continue to be managed by the same experienced management team, including Mr. Morken.

²¹ See Verifications, attached to Sept. 13, 2017 Application.

Further, the transaction will have no adverse impact on Bandwidth's CLEC's customers or competition in telecommunications services more generally. The transaction will be transparent to Bandwidth CLEC's customers. Following the transaction, Bandwidth CLEC will continue to provide service to its customers at the same rates, terms and conditions as it does under existing contracts, without interruption.

For the reasons discussed above, we find that approval of the proposed transaction is in the public interest in accordance with Public Utilities Code section § 854(a). In addition, as stated above, Joint Applicants and Mr. Morken have met the CPCN requirements.

8. Environmental and Safety Considerations

The proposed transfer of control does not constitute a "project" under the California Environmental Quality Act (CEQA), California Public Resources Code, Section 21000, et seq. CEQA applies only to "projects," defined as any "activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."²² The CEQA Guidelines provide for an exemption "[w]here it can be seen with certainty that there is no possibility that the proposed activity in question may have a significant effect on the environment."²³

We have concluded on numerous occasions that a transaction which simply involves the transfer of equity interests does not require CEQA review because granting such an application would have no adverse impact. The

²² See Pub. Res. Code § 21065.

²³ CEQA Guidelines, § 15061(b)(3).

Application at issue here proposes no new construction and thus, there is no possibility that the transaction will have a significant adverse impact on the environment.

Similarly, because no change to the operations of Bandwidth CLEC will occur as a result of the proposed transfer, the change of indirect control does not raise any safety considerations.

9. Request to File Documents Under Seal

On September 13, 2017, applicants filed a motion for leave to file Exhibit C to the Application (financial information) under seal. Applicants state that Exhibit C contains non-public financial information for Bandwidth CLEC, which if made public, could be used to obtain an unfair business advantage. We have granted similar requests in the past and do so here.

10. Categorization and Need for Hearings

The Commission preliminarily categorized this proceeding as ratesetting and found that hearings were required. (See Resolution ALJ 176-3405.) A Scoping Memo issued on November 17, 2017 confirmed the ratesetting categorization, but determined that no hearings were necessary because there were no issues of material facts.²⁴ Based on the record, we affirm that this is a ratesetting proceeding and that hearings are not necessary.

11. Comments on Alternate Proposed Decision

The Alternate Proposed Decision of Commissioner Randolph in this matter was mailed to the parties in accordance with section 311 of the Public Utilities Code and comments were allowed under rule 14.3 of the Commission's

²⁴ Nov. 17, 2017 Scoping Memo at p. 3.

Rules of Practice and Procedure.

Comments were filed on _____ by _____.

Reply comments were filed on _____ by _____.

12. Assignment of Proceeding

Liane M. Randolph is the assigned Commissioner and Zita Kline is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Bandwidth CLEC is a Limited Liability Company (LLC) organized under the laws of the state of Delaware.
2. Bandwidth CLEC was issued a CPCN in D.07-09-035 (U-7038-C). Under the CPCN, Bandwidth CLEC is authorized to provide facilities-based and resold local exchange telecommunication services as a CLEC throughout much of the state of California. Bandwidth CLEC has been operating since 2007.
3. Bandwidth Inc. is a corporation organized under the laws of Delaware and is the sole owner of Bandwidth CLEC.
4. Bandwidth Inc. is registered with the Commission to provide VoIP services and services (U-1362). Bandwidth does not provide any intrastate traditional wireline services in California.
5. David A. Morken is the co-founder, Chief Executive Officer, and Chairman of Bandwidth Inc.
6. Application 17-09-007 was filed on Sept. 13, 2017. The application seeks authorization to transfer indirect control of Bandwidth CLEC to David A. Morken. Following the transfer, Bandwidth CLEC would continue to operate pursuant to CPCN. The proposed change in control would not result in a transfer of Bandwidth CLEC's CPCN to a new entity.

7. Notice of the Application appeared in the Daily Calendar on September 22, 2017. No protests were filed.

8. Neither Bandwidth CLEC, Bandwidth Inc., nor David A. Morken has gross annual California revenue in excess of \$500 million.

9. Because the proposed transfer of control is a parent-level transaction: (a) customers will experience no changes in day-to-day operations of Bandwidth CLEC; (b) the transaction will be transparent to customers of Bandwidth CLEC; and the Commission jurisdiction over Bandwidth CLEC will be the same.

10. The proposed transaction will not result in any changes to the services provided by Bandwidth CLEC or to rates, terms or conditions of service.

11. The proposed transaction will not have an adverse impact on competition or the marketplace.

12. The proposed transaction will not have an adverse impact on the public interest.

13. The proposed transaction will have no significant effect on the environment.

14. The proposed transaction will not have an adverse impact on safety.

15. Applicants have filed financial documents under seal showing they meet the Commission's financial requirements for a CPCN.

16. Applicants have demonstrated sufficient managerial and technical expertise to meet the requirements for a CPCN.

17. Pursuant to Commission Rules of Practice and Procedure 11.4, Applicants filed a motion for leave to file confidential material contained in Exhibit C to the Sept. 13, 2018⁷ Application under seal.

18. Applicants have met the requirement for transfer of a CPCN pursuant to Public Utilities Code Section 854(a).

Conclusions of Law

1. Public Utilities Code section 854(a) provides that no person or corporation shall merge, acquire, or directly or indirectly control a public utility organized and doing business in California without first securing authorization from the Commission.
2. The proposed transaction constitutes a change of control within the meaning of Public Utilities Code section 854(a).
3. Public Utilities Code sections 854(b) and (c) do not apply this transaction.
4. The standard to determine if a transfer of control should be granted under 854(a) is whether the transaction would be “adverse to the public interest.”
5. In a request for a transfer of control, the prospective owner must satisfy the same requirements as those imposed on the CPCN holder. The two major criteria are financial resources and managerial and technical expertise.
6. Applicants have met the Commission’s requirements for approval of the transfer of control applicable to the proposed transaction.
7. Bandwidth CLEC should continue to be bound by the terms and conditions imposed on it when its CPCN was granted in D.07-09-035.
8. This transfer does not require CEQA review because there is no possibility that the transaction will have a significant adverse impact on the environment.
9. The applicants’ motion for leave to file Exhibit C to the Application under seal should be granted in accordance Ordering Paragraph 3 of this decision.
10. Evidentiary hearings are not necessary.
11. This decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The indirect transfer of Bandwidth CLEC to David A. Morken upon the terms and conditions set forth in the Application is approved.

2. The motion of Applicants to file Exhibit C of the Application under seal is granted subject to ordering Paragraph 3.

3. The designated confidential materials referenced in Ordering Paragraph 2 above, shall remain under seal for three years after the date of this order. During this three-year period, the confidential materials shall remain under seal and not be accessible or disclosed to persons other than the Commissioners and Commission staff except on further order or ruling of the Commission, the assigned Administrative Law Judge, or the designated Law and Motion Judge at the time of such ruling. If any interested party believes it is necessary for any of this information to remain under seal longer than three years, that party shall file a new motion stating the justification of further withholding the information from public inspection. The motion shall be filed at least 30 days before expiration of the instant order.

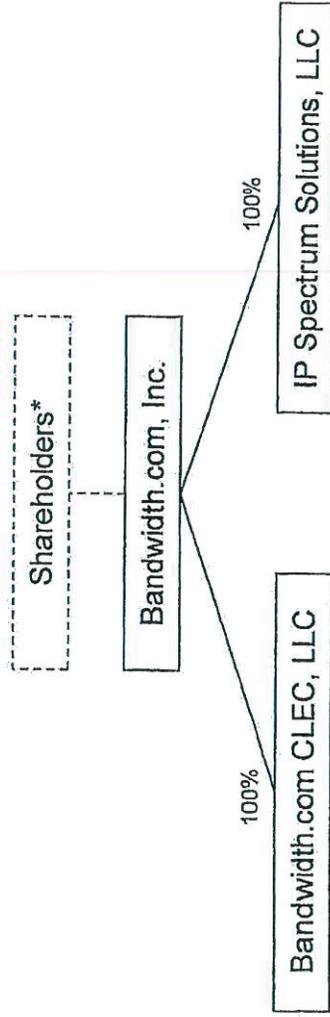
4. Application 17-09-007 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

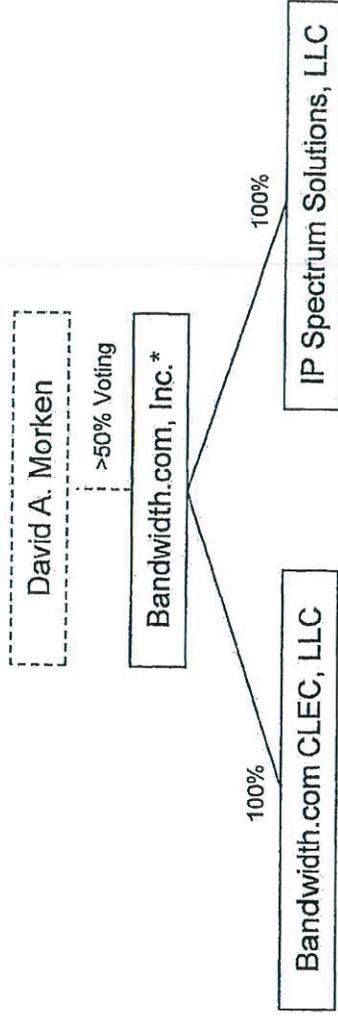
APPENDIX A

Pre-Transaction Structure



*Current 10% Equity and Voting Holders:
 James A. Bowen – 13%
 Henry R. Kaestner – 22%
 David A. Morken – 12%
 Carmichael Investment Partners, LLC – 15%

Post-Transaction Structure



*No new 10% Equity Holder is expected. Depending on Amount of Shares Issued in IPO, 10% Equity Holders of Bandwidth.com, Inc. may include:

- James A. Bowen
- Henry R. Kaestner
- David A. Morken
- Carmichael Investment Partners, LLC