

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of McDATA Corporation, Computer Network Technology Corporation (U-6958-C) and Brocade Communications Systems, Inc. for Approval of the Indirect Transfer of Control of Computer Network Technology Corporation and the Related Name Change of Computer Network Technology Corporation to Brocade Services Corporation.

Application 06-10-033  
(Filed October 27, 2006)

**OPINION AUTHORIZING INDIRECT TRANSFER OF CONTROL****Summary**

This decision grants the joint application of McDATA Corporation (McDATA), Computer Network Technology Corporation (CNT) and Brocade Communications Systems, Inc. (Brocade) (collectively the applicants) for approval of the indirect transfer of control of CNT to Brocade, and the change of CNT's name to Brocade Services Corporation. This proceeding is closed.

**Parties to the Transaction**

CNT is a Minnesota corporation authorized to do business in California. Its principal place of business is located at 6000 Nathan Lane North, Minneapolis, Minnesota, 55442. By Decision (D.) 05-06-057, CNT (U-6958-C) was granted a certificate of public convenience and necessity (CPCN) to operate in California as a limited facilities-based and resale provider of local exchange and interexchange services. CNT is a wholly-owned subsidiary of McDATA.

McDATA is a Delaware corporation. Its principal place of business is located at 11802 Ridge Parkway, Broomfield, Colorado, 80021.

Brocade is a Delaware corporation. Its principal place of business is located at 1745 Technology Drive, San Jose, California, 95110. Brocade designs, markets, sells and supports data storage networking products and services.

### **Proposed Transaction**

Pursuant to the transaction, Brocade will acquire McDATA. As a result, CNT will become a wholly-owned indirect subsidiary of Brocade.

The applicants represent that customers will continue to receive service under the same rates, terms, and conditions after the transaction is approved. CNT's name will be changed to Brocade Services Corporation. Initially, CNT's management will be augmented by McDATA and Brocade's management. Ultimately, the applicants expect CNT's management to consist of members of the existing management of CNT, McDATA and Brocade.

### **Discussion**

Pub. Util. Code § 854 requires Commission authorization before a company may "merge, acquire, or control . . . any public utility organized and doing business in this state . . . ." The purpose of this and related sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.)

In a situation where a company that does not possess a CPCN desires to acquire control of a company that does possess a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since CNT possesses a CPCN

to operate as a limited facilities-based and resale provider of local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to Brocade.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to operate as a facilities-based and resale provider of local exchange and interexchange service must demonstrate that it has a minimum of \$100,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Brocade provided a U.S. Securities and Exchange Commission Form 10-Q that demonstrates that it has sufficient resources to meet our financial requirements. In addition, Brocade submitted biographical information on its management that demonstrates that it possesses sufficient experience and knowledge to operate as a telecommunications provider.

The transaction will add Brocade's expertise to that of McDATA and CNT. In addition, it will be transparent to customers. Therefore, the proposed transaction is not adverse to the public interest. In addition, the proposed name change will not have any foreseeable adverse effect on CNT or its customers.

As discussed above, Brocade has satisfied our financial and expertise requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

### **Comments on Proposed Decision**

This is an uncontested matter, in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code

and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

### **Categorization and Need for Hearings**

In Resolution ALJ 176-3182 dated November 9, 2006, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

### **Assignment of Proceeding**

John Bohn is the assigned Commissioner and Jeffrey P. O'Donnell is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. By D.05-06-057, CNT was granted a CPCN to operate in California as a limited facilities-based and resale provider of local exchange and interexchange services.
2. As a result of the transaction, CNT will become a wholly-owned indirect subsidiary of Brocade.
3. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.
4. Brocade has sufficient financial resources to meet the Commission's requirements to provide facilities-based and resold local exchange and interexchange services.
5. Brocade possesses the necessary technical expertise required by the Commission.
6. The transaction will add Brocade's expertise to that of McDATA and CNT.

7. The proposed name change will not have any foreseeable adverse effect on CNT or its customers.

8. Notice of this application appeared on the Commission's Daily Calendar on November 1, 2006.

9. There were no protests to this application.

10. No hearings are necessary.

**Conclusions of Law**

1. The Commission will apply the same requirements to a request for approval of an agreement to acquire control of a facilities-based and resale provider of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Brocade meets the Commission's requirements for the issuance of a CPCN to provide limited facilities-based and resold local exchange and interexchange telecommunications services.

3. The proposed name change should be approved.

4. The transaction is not adverse to the public interest.

5. The transaction should be approved.

6. In order to avoid delaying the transaction, approval of the application should be made effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Public Utilities Code Section 854, the joint application of McDATA Corporation, Computer Network Technology Corporation (U-6958-C) and Brocade Communications Systems, Inc. for approval of the indirect transfer

of control of Computer Network Technology Corporation to Brocade Communications Systems, Inc. is approved.

2. The change of the name of Computer Network Technology Corporation to Brocade Services Corporation is approved.

3. Application 06-10-033 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.