

ORIGINAL

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June 9, 2005

VIA OVERNIGHT MAIL

Thomas Dorman, Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40602-8294

RECEIVED

JUN 10 2005

PUBLIC SERVICE  
COMMISSION

**Re: Transfer of Control of A.R.C. Networks, Inc. and Related Transactions**

Dear Mr. Dorman:

Eureka Broadband Corporation, d/b/a Eureka Networks ("Eureka") and A.R.C. Networks, Inc. ("A.R.C. Networks," together with Eureka, "the Parties"), transmit an original and eight (8) copies of this filing to notify the Commission of a transaction which will result in a transfer control of A.R.C. Networks to Eureka. In particular, Eureka has entered into an agreement with A.R.C. Network's ultimate and immediate corporate parent, InfoHighway Communications Corporation ("InfoHighway"), through which IH Acquisition Corp. ("Acquisition"), a newly created, wholly owned indirect subsidiary of Eureka, will merge with and into InfoHighway. InfoHighway will be the surviving corporation. As a result of that transaction, InfoHighway and A.R.C. Networks will become wholly owned indirect subsidiaries of Eureka.

The proposed transaction is a stock transaction by which A.R.C. Networks will continue as a going concern. Accordingly, the proposed transaction will not affect the rates, terms or conditions under which A.R.C. Networks provides service in Kentucky. The proposed transaction also will not affect the name under which A.R.C. Networks provides service in Kentucky and will not cause disruption to the services received by A.R.C. Networks' customers in Kentucky. As a result, the proposed transaction will be entirely transparent to A.R.C. Networks' end user customers in Kentucky.

Although the proposed transaction will not change the services provided to A.R.C. Networks' customers, The Parties expect that the proposed transaction will improve their business operations. Specifically, A.R.C. Networks will benefit from the highly qualified and experienced management and financial resources provided by Eureka, although most of the existing management of A.R.C. Networks is expected to continue to oversee on-going operations. Indeed, as described below, Eureka currently holds authority to provide telecommunications services in several states. As a result, the Parties submit that the proposed

transactions will provide A.R.C. Networks access to significant additional resources which will inure to the benefit of its customers.

Based on a review of Kentucky law, it is the Parties' understanding that Commission approval is not required to complete the transaction described herein.<sup>1</sup> Accordingly, the Parties submit this letter for informational purposes only to ensure the continuing accuracy of the Commission's records. The Parties further state as follows:

## **I. DESCRIPTION OF THE PARTIES**

### **A. Eureka Broadband Corporation**

Eureka Broadband Corporation ("Eureka") is a Delaware corporation with offices located at 39 Broadway, New York, New York 10006. Eureka is a privately held corporation which does business under the d/b/a Eureka Networks. Eureka, through its operating subsidiaries, provides a variety of regulated and unregulated services, including facilities-based Internet Services, high-speed Internet access, IP- (Internet protocol-) based application services to business customers with bandwidth-intensive needs and local and long distance voice products. Eureka's primary operations are in the New York City and Washington D.C. metropolitan areas where Eureka's subsidiaries work with property owners to install network infrastructure and offer high-quality services to building tenants. In addition to access services, the company provides voice and other services to enterprise customers in both on-net and off-net locations. Eureka operating companies have access to nearly 550 pre-wired buildings, including more than 350 buildings in the New York metro area. Eureka's affiliates also holds authority to provide regulated telecommunications services in four states.

Eureka is financially, managerially, and technically qualified to acquire A.R.C. Networks. Eureka's management team is run by Jeffrey Ginsberg, the Chairman of the Board of Eureka and Raul K. Martynek, the President and Chief Executive Officer of Eureka. Mr. Ginsberg is an experienced telecommunications entrepreneur who manages the overall strategic direction of the business, and has in particular, extensive experience in capital raising, mergers and acquisitions and real estate relationships. Mr. Ginsberg was Chairman and CEO of Eureka Broadband, the precursor to Eureka Networks, from June 1999 to December 2000. Mr. Ginsberg has also served as Chairman and founder of Apex Site Management, Inc., a leading real estate/telecommunications management company which was acquired by Spectrasite in 1999. Mr. Ginsberg also co-founded Horizon Cellular Group, which owned and operated 15 cellular systems.

Mr. Martynek has served as the President & CEO of Eureka since 2003. Mr. Martynek was formerly the Chief Operating Officer of Eureka Networks, where he oversaw all corporate operations and was responsible for all facets of the company's voice and data operations, customer care, IT, merger integrations and gross margin enhancement projects. Prior to Eureka Networks, Mr. Martynek was one of the first employees of Gillette Global Networks, joining the company in 1995 and serving in several capacities, including Chief Operating Officer beginning

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<sup>1</sup> See Administrative Case No. 359.

in 1999. Mr. Martynek has spoken at numerous industry events and is frequently quoted in industry periodicals.

## **B. InfoHighway Communications Corporation**

InfoHighway Communications Corporation ("InfoHighway") is a Delaware corporation with headquarters located at 175 Pinelawn Road, Suite 408, Melville, New York 11747. InfoHighway provides integrated communications solutions, including end-to-end voice and data communications solutions primarily to business customers in major markets in the northeastern United States and selected areas of Texas. Among other services, through its wholly owned subsidiary, A.R.C. Networks, InfoHighway offers high-quality local and long distance telephone services, point-to-point data services, high-speed Internet services, network design and wiring.

In Kentucky, A.R.C. Networks is authorized to provide interexchange services pursuant to a certification issued in Case No. TFS2004-01133 on September 10, 2004. Further information regarding InfoHighway and A.R.C Networks has been previously submitted to the Commission, is therefore a matter of public record, and is incorporated herein by reference.

## **II. CONTACTS**

Questions or any correspondence, orders, or other materials pertaining to this filing should be directed to:

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### III. DESCRIPTION OF TRANSACTION

Eureka and InfoHighway have proposed to complete a transaction through which InfoHighway will become an indirect, wholly owned subsidiary of Eureka. In particular, Eureka and InfoHighway have entered into an Agreement and Plan of Merger ("Agreement") dated as of May 9, 2005. Under the terms of the Agreement, Eureka, IH Acquisition Corporation ("Acquisition") -- a wholly owned indirect subsidiary of Eureka Holdings Incorporated -- will be merged with and into InfoHighway.<sup>2</sup> InfoHighway will survive that merger and will become an indirect subsidiary of Eureka. InfoHighway will survive that merger and will become an indirect subsidiary of Eureka. In connection with the proposed merger, each share of preferred stock of InfoHighway will be converted into the right to receive a portion of the merger proceeds. Following the proposed transaction, Eureka will indirectly own all of the outstanding stock of InfoHighway. An illustrative chart of the proposed transactions is provided in Exhibit A.

In connection with the proposed transaction, the Parties expect to enter into certain financing arrangements. In particular, the Parties expect to enter into a debt financing arrangement with Capital Source Financing LLC ("CapSource"). Under the terms of the financing arrangement, CapSource will provide Eureka with a senior secured credit facility in the amount of \$5 million and a term loan in the amount of \$20 million. In connection with those financing arrangements, Eureka will grant to CapSource a security interest in all of its assets. As new subsidiaries of Eureka Parent, InfoHighway and A.R.C. Networks will also issue security interests in their respective assets to CapSource. Those entities will also issue guarantees in support of the proposed financial arrangements. The proceeds of the proposed financing arrangements will be used by the Parties to complete the transaction.

The proposed Transactions will be completed as a stock transaction and A.R.C. Networks will continue to provide services under the same rates, terms and conditions as those services are currently provided in Kentucky. As such, the Parties expect that the proposed transactions will be entirely transparent to A.R.C. Networks' Kentucky customers. As an equity transaction, the proposed transaction will not affect the name under which A.R.C. Networks operates in Kentucky or cause any assignment of the Kentucky operating authorities held by A.R.C. Networks or by Eureka or its affiliates. The proposed transaction will not cause any service interruptions or discontinuances or have any immediate substantial change on A.R.C. Networks' day to day operations in Kentucky.

### IV. PUBLIC INTEREST CONSIDERATIONS

Eureka's acquisition of A.R.C. Networks serves the public interest in promoting competition among telecommunications providers in Kentucky. In particular, the proposed transaction will combine the strengths of Eureka and A.R.C. Networks which should allow the combined companies to compete more effectively against incumbent carriers and larger competitive carriers which have substantial resources and can offer a wide range of facilities based service offerings.

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<sup>2</sup> Eureka Holdings Incorporated is a recently created, wholly owned subsidiary of Eureka which, following the proposed transaction, will be the direct corporate owner of InfoHighway.

The operations of the Parties are highly complementary. Eureka has extensive assets concentrated in New York City and the mid-Atlantic region and particular expertise in providing a variety of voice and data telecommunications and IP products and services. InfoHighway has a substantially wider coverage area and extensive experience in providing regulated services to commercial and residential customers. The Parties believe that the proposed transaction will enhance the ability of the entities to expand their respective operations both in terms of service area coverage and through the ability of each entity to offer customers an expanded line of products and services. In addition, the Parties expect that the proposed transaction, by combining Eureka's substantial facilities-based network and A.R.C. Networks' customer base, will yield substantial operational and financial benefits to the combined companies.

V. CONCLUSION

Please date stamp and return the extra copy of this letter in the attached self-addressed stamped envelope as soon as possible. If there are any questions regarding this filing, please contact the undersigned counsel. Thank you for your attention to this matter.

Respectfully submitted,



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Counsel for InfoHighway Communications  
Corporation and A.R.C. Networks, Inc.

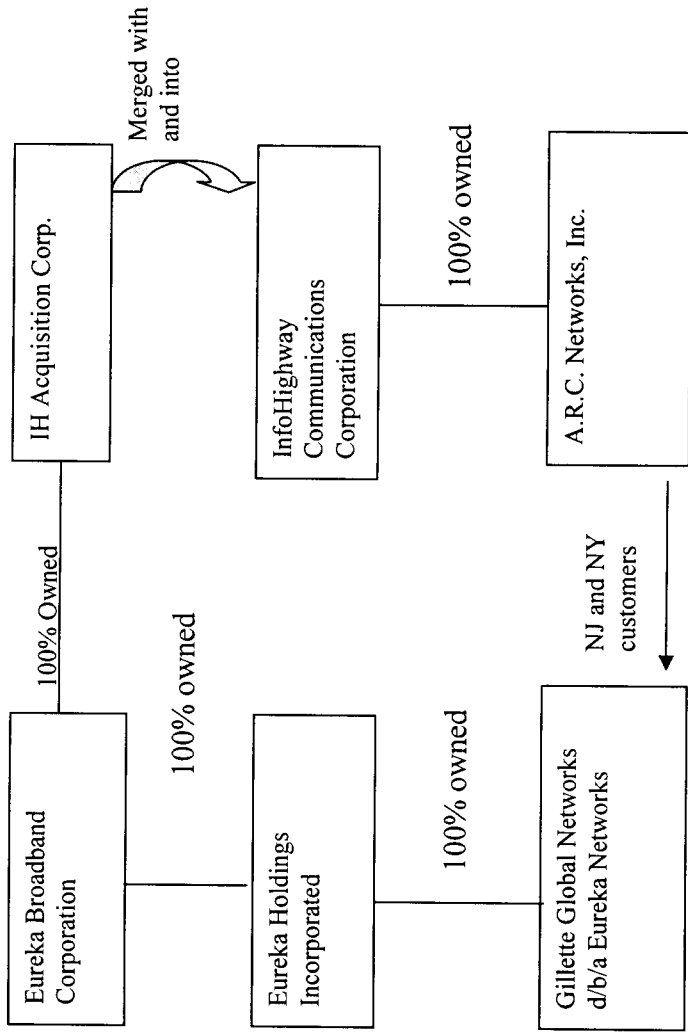
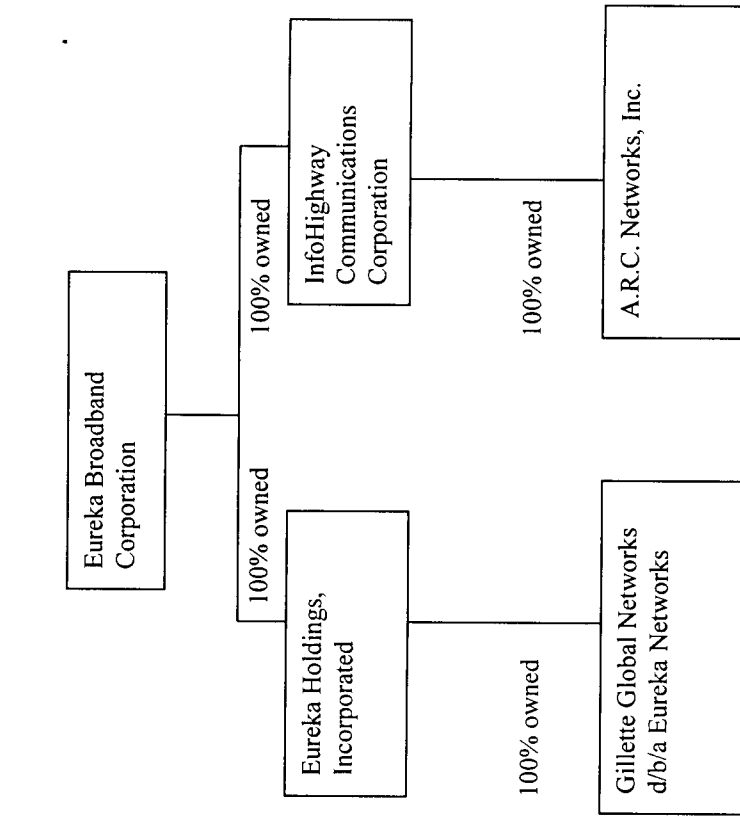
Counsel for Eureka Broadband  
Corporation

Dated: June 9, 2005

**EXHIBIT A**

**Illustrative Chart**

**POST TRANSACTION**





VERIFICATIONS

VERIFICATION

STATE OF NEW YORK )  
 ) ss:  
CITY OF NEW YORK )

I, JEFFREY E. GINSBERG, being first duly sworn, state that I am CHAIRMAN of Eureka Broadband Corporation; that I am authorized to make this Verification on behalf of Eureka Broadband Corporation; that the contents of the foregoing filing are true and correct to the best of my knowledge, information, and belief.

*Jeffrey E. Ginsberg*

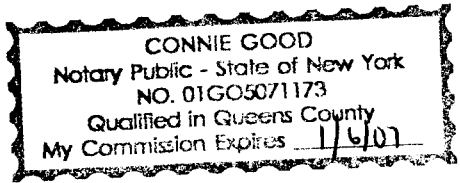
\_\_\_\_\_  
Name: JEFFREY E. GINSBERG  
Title: CHAIRMAN

Sworn and subscribed before me this 19 day of May, 2005.

*Connie Good*

\_\_\_\_\_  
Notary Public

My commission expires 1/6/07



**VERIFICATION**

STATE OF NEW YORK

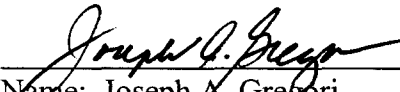
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COUNTY OF SUFFOLK

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I, Joseph A. Gregori, hereby state that I am the Chief Executive Officer of A.R.C. Networks, Inc.; that I am authorized to make this Verification on behalf of A.R.C. Networks, Inc.; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

  
Name: Joseph A. Gregori  
Title: Chief Executive Officer  
A.R.C. Networks, Inc.

Joseph A. Gregori  
Typed or Printed Name

SWORN TO AND SUBSCRIBED before me on the 1<sup>st</sup> day of June, 2005.

  
Notary Public

My commission expires: 1/21/07

LOIS CIRAOLLO  
Notary Public, State of New York  
No. 01CI5071869  
Qualified in Nassau County  
Commission Expires January 21, 2007