



Agenda Date: 3/18/16
Agenda Item: IVD

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF ODYSSEY/EXTENET INTERNAL) ORDER
PRO FORMA CHANGE OF CONTROL)
)
) DOCKET NO. TM16030187

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On January 7, 2016, Odyssey Acquisition, LLC (“Odyssey”); ExteNet Holdings, Inc. (“ExteNet Holdings”); and ExteNet Systems, Inc. (“ESI”) (collectively, the “Parties”) filed a verified letter (the “Notification”) notifying the New Jersey Board of Public Utilities (“Board”) of a pro forma internal change in direct ownership of ESI from ExteNet Holdings to Odyssey, the direct parent of ExteNet Holdings (the “Pro Forma Change”). The Notification avers that since ESI does not provide telecommunications services in New Jersey and the change in ownership is pro forma in nature, the Pro Forma Change does not require approval under N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10 or falls within the exceptions contained in N.J.S.A. 48:2-51.1(b), N.J.S.A. 48:3-7(b) and N.J.S.A. 48:3-10(b). In the Notification, the Parties request that, if the Board concludes that approval is required for the Pro Forma Change, the Board treat the Notification as a Petition requesting approval of the Pro Forma Change.

BACKGROUND

ESI is a Delaware corporation and currently a wholly owned direct subsidiary of ExteNet Holdings, a Delaware corporation. ExteNet Holdings is a wholly owned direct subsidiary of Odyssey. The executive office of ESI and ExteNet Holdings is at 3030 Warrenville Rd., Suite 340, Lisle, Illinois 60532.

ESI and its subsidiaries (collectively, “ExteNet”) design, build, own and operate distributed networks for use by national and regional wireless service providers (“WSPs”) in key strategic markets in North America. Using distributed antenna systems (DAS), small cells, Wi-Fi and other technologies, ExteNet deploys distributed networks to enhance coverage and capacity and enables superior wireless service in both outdoor and indoor environments. ExteNet is a “carrier’s carrier” providing point-to-point telecommunications services to its WSP customers, and does not provide services directly to retail consumers.

In New Jersey, ESI is authorized to provide local exchange and interexchange services. See I/M/O ClearLinx Network Corporation Petition for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE05121059, Order dated April 13, 2006.¹ The Parties state that ESI does not have any operations in New Jersey.

Odyssey is a Delaware limited liability company with executive offices at 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487. Odyssey is a wholly owned direct subsidiary of Odyssey Intermediate Holdings, Inc. ("Holdco"), a Delaware corporation and itself a wholly owned direct subsidiary of Mount Royal Holdings, LLC ("Parent"), a Delaware limited liability company. The primary owners of Parent are private equity investors: Digital Bridge Small Cell Holdings, LLC, Stonepeak Communication Holdings LLC, Delta-v Capital MRH LP, and Vertical Towers Holdings, LLC. Additional information regarding Odyssey and Parent was recently provided in connection with the acquisition of ExteNet by Odyssey² and the Board takes official notice of this information and incorporates it herein by reference.

DISCUSSION

The Notification states that the Pro Forma Change will result from the merger of ExteNet Holdings with and into ESI, whereupon the separate existence of ExteNet Holdings will cease and ESI will be the surviving entity as a direct, wholly-owned subsidiary of Odyssey. The Parties assert that the change in direct ownership of ESI is pro forma in nature because Odyssey, and ultimately Parent, will control ESI both before and after the merger. The Notification includes charts depicting the current and post-Pro Forma Change entity ownership structure of the Parties.

Pursuant to N.J.S.A. 48:2-51.1(a), "the Board shall evaluate the impact of [an] acquisition [of control of a public utility] on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates." In evaluating this Petition, the Board must be "satisfied that positive benefits will flow to customers and the State of New Jersey and, at a minimum, that there are no adverse impacts on any of the criteria delineated in N.J.S.A. 48:2-51.1" as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

The Parties assert that the Pro Forma Change is in the public interest since it will be transparent to ESI's customers and will not transfer actual working control of ESI or create a new majority equity owner in Parent. Moreover, the Notification states that the Pro Forma Change will not affect the rates, terms and conditions under which ESI operates and ESI will continue to provide high-quality communications services to its customers without interruption. Further, the Parties claim that the Pro Forma Change will provide accounting and other efficiencies to the benefit of ESI and will provide ESI greater flexibility in its financing arrangements without affecting customers or the public interest.

¹ ClearLinx Network Corporation subsequently changed its name to ExteNet Systems, Inc.

² See I/M/O the Verified Joint Petition of Odyssey Acquisition, LLC and ExteNet Systems, Inc. for Approval (1) of the Transfer of Indirect Control of ExteNet Systems, Inc. to Odyssey Acquisition, LLC and (2) for ExteNet Systems, Inc. to Participate In Certain Financing Arrangements, Docket No. TM15080862.

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed this matter and, by letter dated February 25, 2016, advised that it "does not oppose Board approval of the requests" in the Notification. (Letter from Rate Counsel to the Board at 1.)

FINDINGS AND CONCLUSIONS

After careful review of this matter and all related documents, the Board concludes that there will be no negative impact on rates or service quality since Petitioners' New Jersey customers will continue to receive the same services from the same entities at the same rates and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the Pro Forma Change will provide accounting and other efficiencies to the benefit of ESI and will provide ESI greater flexibility in its financing arrangements without affecting customers or the public interest. In addition, the Board is persuaded that there will not be any adverse impact to employees.

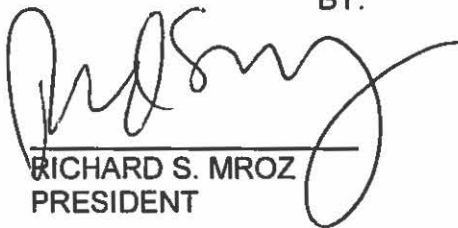
Accordingly, the Board **FINDS** that the Pro Forma Change is consistent with the applicable law and is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the Pro Forma Change will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the Pro Forma Change.

This Order shall become effective March 28, 2016.

DATED: 3-18-16

BOARD OF PUBLIC UTILITIES

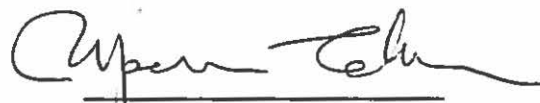
BY:


RICHARD S. MROZ
PRESIDENT

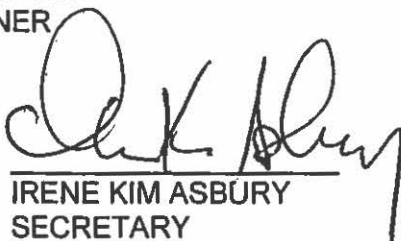

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

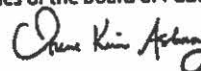

DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF ODYSSEY/EXTENET INTERNAL PRO FORMA CHANGE OF CONTROL

DOCKET NO. TM16030187

SERVICE LIST

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Maria Novas-Ruiz, Esq.
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
mnovas@rpa.state.nj.us

Patricia A. Krogman
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
Patricia.Krogman@dol.lps.state.nj.us

Dennis C. Linken
Scarinci & Hollenbeck, LLC
1100 Valley Brook Avenue
Lyndhurst, NJ 07071-0790
dlinken@scarincihollenbeck.com

Rocco Della Serra
Board of Public Utilities
Office of Cable Television &
Telecommunications
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Rocco.Della-Serra@bpu.state.nj.us

Jimarli Figueiredo
Board of Public Utilities
Office of Cable Television &
Telecommunications
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, NJ 08625-0350
Jimarli.figueiredo@bpu.state.nj.us