



Agenda Date: 7/29/16
Agenda Item: 4A

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 THE VERIFIED PETITION OF XO)
HOLDINGS, XO COMMUNICATIONS SERVICES, LLC)
AND VERIZON COMMUNICATIONS, INC. FOR)
APPROVAL OF A PROPOSED TRANSACTION)
ORDER
DOCKET NO. TM16030248

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Keefe B. Clemons, Esq., General Counsel – Regulatory Affairs, Northeast Region, on
behalf of Petitioners

BY THE BOARD:

On March 21, 2016, XO Holdings, XO Communications Services, LLC ("XO Communications Services") and Verizon Communications Inc. ("Verizon Communications") (collectively hereinafter referred to as "Petitioners") submitted a verified petition ("Petition") to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.14 requesting Board approval of a proposed transaction to transfer to Verizon an indirect 100% ownership interest in XO Communications Services currently held by XO Holdings. Upon closing of the transaction, XO Communications Services will become a wholly-owned indirect subsidiary of Verizon Communications, a holding company, and will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

XO Communications Services is a Delaware limited liability company with its principal offices located in Herndon, Virginia. It is a wholly-owned subsidiary of XO Communications, LLC ("XO Communications"), which in turn is a wholly-owned direct subsidiary of XO Holdings, a Delaware general partnership. XO Holdings, through various intermediate holding companies, is wholly-owned and controlled by Carl C. Icahn. In New Jersey, XO Communications Services offers local and long distance voice, Internet access, cloud connectivity, private line, Ethernet, and other private data and network transport services for small and medium-sized companies, enterprises, national and government customers, and other carriers. According to the petition, XO Communications Services does not offer or provide mass-market retail services to

consumers. In New Jersey, XO Communications, LLC (f/k/a XO Communications and previous to that, NEXTLINK New Jersey Inc.) is authorized to provide local exchange and interexchange telecommunications services pursuant to authority granted by the Board. In the Matter of the Petition of Nextlink New Jersey Inc. for the Approval of an Initial Tariff and Related Relief, and Authority to Provide Local Exchange and Inter-Exchange Telecommunications Services throughout New Jersey, Docket No. TE98010009, Order dated July 30, 1998.

Verizon Communications, a publicly traded Delaware corporation with headquarters located in New York, New York, and is a holding company with operating subsidiaries that provide communications services in New Jersey and throughout the United States. Verizon Communications' subsidiaries provide services to consumers, business, and government customers as well as to other carriers. The petition states that the wireline business conducted by Verizon Communications' subsidiaries provides voice, data, and video communications products and enhanced services, including broadband video and data, corporate networking solutions, data center, cloud services, managed network services and local and long distance voice services.

The proposed transaction is a transfer to Verizon Communications of an indirect 100% ownership interest in XO Communications Services, currently held by XO Holdings. The Petition states that, under the proposed transaction, XO Holdings will sell all of its interests in XO Communications Services to Verizon Communications. Upon closing of the transaction, XO Communications Services will become a wholly-owned indirect subsidiary of Verizon Communications. As a result, XO Communications Services will be transferred as an entity to Verizon Communications, with no change in XO Communications Services identity or assets, and, therefore no associated customer or asset transfers.

Petitioners assert the proposed transaction will enable Verizon Communications to better compete with service providers by expanding Verizon Communication's fiber assets to improve its bandwidth capacity and wireless network reliability, and, to foster operational and economic efficiencies on the latest technology and service developments through capital injections in XO Communications Services networks to achieve synergies for customer benefits. Petitioners additionally argue the transaction has no adverse effect because XO Communications Services, as a subsidiary of Verizon Communications, will continue to meet all of its contractual and regulatory obligations, therefore entity transition will be seamless to customers. Petitioners contend that the transaction will not harm competition for business, government, or wholesale customers because a wide range of providers and new market entrants have already deployed facilities and are investing in those facilities.

Following submission of the petition, discovery commenced by the Staff of the Board of Public Utilities ("Staff"), to which the Petitioners and the New Jersey Division of Rate Counsel ("Rate Counsel") were noticed. Petitioners provided written responses to discovery requests on the impact of the proposed transaction.

Rate Counsel submitted comments to the Board on May 11, 2016, supporting the proposed transaction to provide innovative, high quality telecommunications services to customers. While Petitioners state the transfer of ownership would only result in changes at the parent level of XO Communications Services and Verizon Communications, and, would not change or affect XO Communication Services' day-to-day operations or customer-facing activities, Rate Counsel raises a concern on the potential negative impact to XO Communications Services employees in New Jersey. Rate Counsel, therefore, recommends that any approval be conditioned upon

no negative impact or reduction of New Jersey employees for a minimum five-year period post transaction or no negative impact on employee pension obligations as triggered under N.J.S.A. 48:3-7.

On July 6, 2016, Petitioners replied to Rate Counsel's comments, wherein they responded that a conditional approval of the proposed transaction is improper. Petitioners state the XO Communications Services employees are not pensioned, therefore N.J.S.A. 48:3-7 is not implicated as no pension obligation exists. Petitioners assure that, upon closing of the proposed transaction, XO Communications Services employees will be transferred to the Verizon 401K plan, offering greater benefits than their current 401K plan. With regard to maintaining employee levels, Petitioners anticipate some merger savings as a result of the transaction and request an opportunity to assess the post-transactional combined entity needs before deciding on the maximization of efficiency and operational effectiveness going forward. Petitioners argue any guarantee on post-transactional employee levels is an unreasonable constraint on its ability to achieve synergy savings. To that end, Petitioners also oppose any guarantee that particular employees retain their jobs for a finite period after closing because the requirement would place XO Communications Services employees in a special status that other similarly-situated Verizon employees do not enjoy. While Petitioners therefore oppose any Board approval conditioning the transaction on maintaining current XO Communications Services employee levels, Petitioners would agree to a notification requirement to the Board, providing an explanation if there is a net loss of XO customer-facing jobs in New Jersey that is greater than fifteen percent (15%).¹

FINDINGS AND CONCLUSIONS

In considering a request for Board approval, the Board shall evaluate the impact of such an acquisition 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. N.J.S.A. 48:2-51.1(a). 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. 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.

On the impact to competition, the benefits include an improved bandwidth capacity and wireless network reliability for customers and the latest technology and service developments offering to meet customer demand. New Jersey consumers will benefit from the proposed transaction and are not harmed by the increasing market concentration because the Verizon Communications acquisition of the XO Communications Services business will provide the financial resources to support and promote better use of a fiber network asset. The Board is, therefore, satisfied that positive benefits will flow to customers and that the transaction will strengthen Petitioners' competitive posture in the telecommunications market due to access to additional resources.

¹ In the Matter of the Verified Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of the Transfer of Control of Time Warner Cable Information Services (New Jersey), LLC and Approval of Transaction Financing, Docket No. TM15070772, Order dated March 31, 2016.

On the impact to rates and service quality, the benefits include the continuation of the same services in New Jersey at the same rates, terms, and conditions. After a thorough review of the Petition and exhibits and the Board's independent review of the record in this matter, 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 at the same rates and under the same terms and conditions.

On the impact to employees, the Board notes that XO Communications Services currently employs 136 persons in New Jersey. Petitioners note that there are no immediate plans with respect to these employees. While Rate Counsel has requested no negative impact on employee pensions, Petitioners have responded that no pension obligation currently exists therefore N.J.S.A. 48:3-7 is not implicated. The ability of the utility to fulfill pension obligations to its employees is a factor for the Board to consider pursuant to N.J.S.A. 48:3-7. N.J.S.A. 48:3-7(a) provides where it appears that the public utility or a wholly-owned subsidiary thereof may be unable to fulfill its obligation to any employees thereof with respect to pension benefits previously enjoyed, whether vested or contingent, the Board shall not grant its approval unless the public utility seeking the Board's approval for disposition assumes such responsibility as will be sufficient to provide that all such obligations to employees will be satisfied as they become due. As XO Communications Services employees are not pensioned, the Board agrees that N.J.S.A. 48:3-7(a) is inapplicable. The Board notes that Petitioners have assured that XO Communications Services employees with an existing 401K plan will continue to have access to the same 401K plan, including their vested interests and prior contributions, immediately after closing, and these XO Communications Services employees will eventually be transitioned to the Verizon 401K plan. By this assurance, the Board is persuaded that Petitioners will endeavor to minimize any potential adverse impact to employees in New Jersey. The Board, therefore, requires Petitioners to notify the Board, providing an explanation if there is a net loss of XO customer-facing jobs in New Jersey that is greater than fifteen percent (15%) for four (4) years post-issuance of this order.

After careful review of this matter, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest, has a likelihood of creating positive benefits, and will have no material impact on the rates of current customers. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY ORDERS** that Petitioners are authorized to proceed with the proposed transaction.

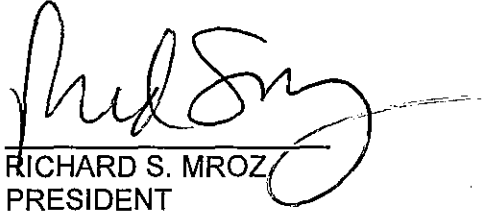
The Order is issued subject to the following provisions:

1. For four (4) years from the issuance of this Order, if there is any net loss of customer-facing jobs in New Jersey, greater than (15%), Verizon Communications shall notify the Board of such change and provide an appropriate explanation.
2. The Order is subject to Petitioners notifying the Board Secretary and the Office of Cable Television and Telecommunications, in writing, within five (5) days of the date of the closing of the proposed transaction.

This Order shall be effective August 8, 2016.

DATED: 7/29/16

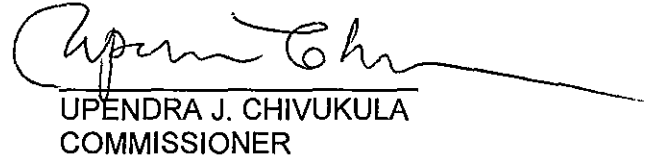
BOARD OF PUBLIC UTILITIES
BY:

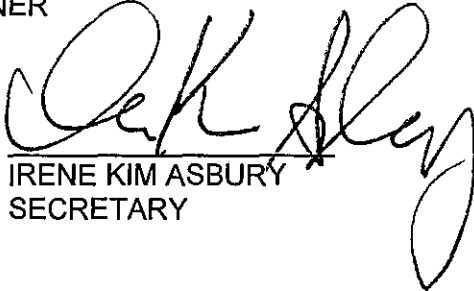

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

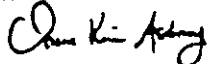

MARY-ANNA HOLDEN
COMMISSIONER


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



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