



Agenda Date: 9/22/17  
Agenda Item: IVB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

OFFICE OF CABLE TELEVISION  
AND TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION ) ORDER OF APPROVAL  
OF NETWORK BILLING SYSTEMS, LLC, ASSIGNEE, )  
AND BCN TELECOM, INC., ASSIGNOR FOR )  
APPROVAL FOR ASSIGNEE TO ACQUIRE CERTAIN )  
ASSETS AND MASS MIGRATION OF CERTAIN )  
CUSTOMERS OF ASSIGNOR ) DOCKET NO. TM17080873

**Parties of Record:**

**Andrew O. Isar**, Miller Isar, Inc, for Network Billing Systems, LLC  
**Patrick D. Crocker**, for BCN Telecom, Inc.  
**Stefanie A. Brand, Esq.**, Director, for New Jersey Division of Rate Counsel

**BY THE BOARD:**

On August 18, 2017, telecommunications service providers Network Billing Systems, LLC d/b/a Fusion d/b/a Solex ("NBS") and BCN Telecom, Inc. ("BCN")(collectively, "Petitioners") filed a verified petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:3-7 and N.J.A.C. 14:10-12.1 et seq., for authorization for BCN to sell and NBS to acquire a limited subset of BCN subscriber assets, including certain commercial customer accounts, in a transactional agreement. As a result, NBS, under the registered trade name "Solex", would serve a subset of transferred BCN customers under current terms, rates, and conditions without any immediate changes. Petitioners additionally applied for approval to waive or modify certain provisions of N.J.A.C. 14:10-12.1 et seq., the mass migration rules.

**BACKGROUND**

NBS is a limited liability corporation formed under the laws of the State of New Jersey. NBS is an affiliate of Fusion Telecommunications International Inc. NBS provides unified communications and hosted voice and data services, broadband Internet access service, interconnected VoIP, data networks, and traditional voice services to commercial and residential subscribers. In New Jersey, NBS is authorized to provide local exchange and interexchange services on September 12, 2008. See In the Matter of the Verified Petition of

Network Billing Systems, LLC for Approval to Provide Local Exchange, and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE08070466 (September 12, 2008).

BCN Telecom, Inc. is a corporation incorporated under the Laws of the State of New Jersey. BCN provides voice and data services, Internet access services, VOIP Services, SIP trunking and hosted PBX to SMB and Enterprise level business customers. In New Jersey BCN is authorized to provide local exchange telecommunications services on February 23, 2004. See In the Matter of the Petition of BCN Telecom, Inc., for Approval to Provide Local Exchange Telecommunications Services Within the State of New Jersey, TE04040254 (January 12, 2005).

## DISCUSSION

According to the petition, BCN and NBS entered into an Asset Purchase Agreement dated March 1, 2017 whereby NBS agreed to acquire a limited subset of BCN subscriber assets, including certain commercial customer accounts. Pursuant to the agreement on the transfer of assets and customer accounts, NBS, under the registered name "Solex", would provide local exchange and interexchange services for a subset of transferred BCN customers under current BCN rates, terms and conditions without any immediate changes. The petition further notes that BCN would continue to provide service to its remaining subscribers.

Petitioners provided notice of the carrier change to customers on April 20, 2017, more than 30 days in advance of its planned departure date pursuant to Federal Communications Commission ("FCC") rules, specifically, 47 C.F.R. §64.1120(e). This notice informs customers of the transaction and the option to select another carrier.

Petitioners have requested four waivers of certain provisions of the mass migration rules at N.J.A.C. 14:10-12.1 et seq. Petitioners request a waiver of N.J.A.C. 14:10-12.3(b) and (d), specifically the submission of an exit plan and permission to abandon service no less than sixty (60) days prior to planned departure because neither telecommunications service provider ("TSP") is exiting the market. Petitioners also request a waiver of N.J.A.C. 14:10-12.5(c) and (e), the requirement to provide notice to incumbent local exchange carriers ("ILECs") and other network service providers at the same time notice is given to end users because the transaction is not a discontinuance of service. Petitioners request a waiver of N.J.A.C. 14:10-12.7, the requirement to provide an end user list to the Board because all affected subscriber accounts are being transferred and therefore not discontinued. Petitioners additionally request a waiver of N.J.A.C. 14:10-12.8, the requirement to provide a progress report with the Board on the departure date because the transaction is not a discontinuance of service therefore a migration progress report has no impact on the transfer of select BCN subscribers and would impose additional burdens on NBS.

By letter dated August 28, 2017, the New Jersey Division of Rate Counsel ("Rate Counsel") filed comments stating that it did not object to relaxation, modification and/or waiver of the mass migration rules under these facts because additional customer notices might lead to customer confusion. Rate Counsel indicated that Petitioners provided a migration plan and provided affected customers with notice of over thirty (30) days prior to the migration of services from BCN to NSB d/b/a/ Solex, which will continue to provide services under the same terms, rates and conditions as BCN. Rate Counsel commented that rule waivers have been granted under

very limited circumstances on a case by case basis only when customers would not be prejudiced or detrimentally impacted by a notice waiver.

### **FINDINGS AND CONCLUSION**

The Board is authorized to waive its rules pursuant to N.J.A.C. 14:1-1.2. N.J.A.C. 14:1-1.2(a) provides the rules shall be liberally construed to permit the Board to effectively carry out its statutory functions and to secure a just and expeditious determination of issues. N.J.A.C. 14:1-1.2(b)(1) provides the Board may, for good cause shown, relax or permit deviations from these rules provided full compliance with the rule(s) would adversely affect the ratepayers, the ability of a regulated entity to continue to render safe, adequate and proper service, or the interests of the general public. Petitioner has requested a waiver of portions of the Board's mass migration rules at N.J.A.C. 14:10-12.3(b) and (d), N.J.A.C. 14:10-12.5(c) and (e), N.J.A.C. 14:10-12.7, and N.J.A.C. 14:10-12.8, described above, as the transaction does not constitute a conventional mass migration of subscribers or cessation of service.

After a thorough review of the petition and all related documents, the Board **FINDS** there is good cause shown that full compliance with certain mass migration rules, as explained below, would adversely affect customers, therefore a rule waiver is in the best interests of the parties.

N.J.A.C. 14:10-12.1 et seq. governs the transfer of end users between telecommunications service providers when one TSP is about to depart from its service territory, a transfer known as mass migration. The mass migration rules reduce the level of uncertainty and confusion that end users and other TSPs face when their TSP discontinues service to the local market. The rules apply to TSPs involved in the transfer of control, transfer of assets, and transfer of customer base in cases where customers are affected by the transfer and also in cases where the departing TSP's customer base is acquired by another TSP.

The underlying transaction is a transfer of assets and customer accounts affecting a subset of customers. The mass migration rules which Petitioners seek to waive apply to departing telecommunications service providers. The Board notes Petitioners are not exiting the market. The transfer of customers from BCN to NBS will be virtually seamless and the affected subset of BCS commercial customers will continue to receive service at the same rates, terms and conditions from NBS. As the transaction will be transparent to customers, the Board **FINDS** this transaction does not involve a discontinuance of service therefore certain rules involving departing TSPs are subject to waiver. The Board notes the majority of information required by an exit plan on steps to facilitate the transfer of end users to a new TSP, including the transfer of assets requiring Board approval, was provided pursuant to N.J.A.C. 14:10-12.3(b)(2).

The Board **HEREBY GRANTS** the waiver requests for the reasons set forth in Petitioners' filings as described above.

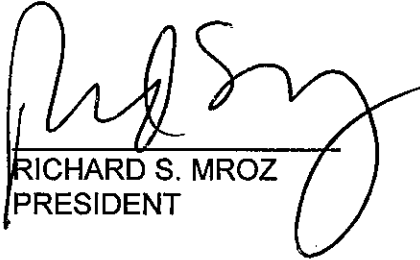
Accordingly, after careful review of this matter, the Board **FINDS** that there will be no negative impact on rates or service quality to customers, nor will there be a negative impact on competition. The Board also **FINDS** that the transfer of assets and customer accounts will not negatively impact the provision of safe, adequate and proper service. Furthermore, the Board **FINDS** that the transfer will likely have a net positive benefit to the customers in the State.

Therefore, the Board, after investigation, having considered the record and exhibits submitted, **FINDS** that the transfer of assets and customer accounts is in accordance with the law and in the public interest. The Board **HEREBY AUTHORIZES** the request by Petitioners to finalize the transaction. The Board **ORDERS** that Petitioners shall notify the Board of the closing on the transaction within ten (10) days of consummation of the transfer.

This Order shall be effective October 2, 2017.

DATED: 9/22/17

BOARD OF PUBLIC UTILITIES  
BY:



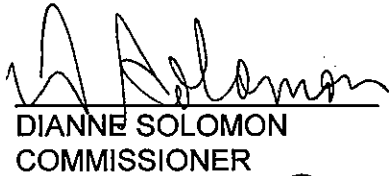
RICHARD S. MROZ  
PRESIDENT



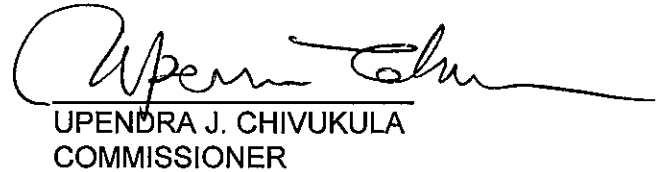
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MARY ANNA HOLDEN  
COMMISSIONER

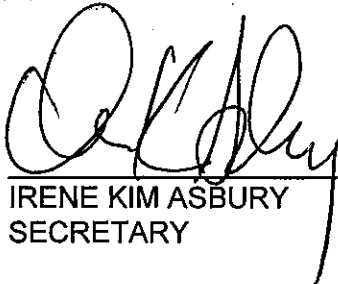


DIANNE SOLOMON  
COMMISSIONER



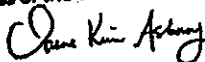
UPENDRA J. CHIVUKULA  
COMMISSIONER

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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DOCKET NO. TM17080873

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