



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
PO Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT)
PETITION OF DSLNET)
COMMUNICATIONS, LLC, AND DIECA)
COMMUNICATIONS FOR AUTHORITY TO)
COMPLETE CERTAIN PRO FORMA)
INTRA-CORPORATE TRANSACTIONS)

ORDER OF APPROVAL

DOCKET NO. TM11090551

James H. Laskey, Esq., Norris McLaughlin & Marcus, for Petitioners
Stefanie A. Brand, Esq., Division of Rate Counsel, Department of Public Advocate

BY THE BOARD:

On September 22, 2011, DSLnet Communications, LLC (“DSLnet”) and DIECA Communications, Inc. (“DIECA”) (and together with DSLnet, the “Petitioners”) filed with the New Jersey Board of Public Utilities (“Board”), pursuant to N.J.S.A. 48:2-51.1 and 48:3-7, a verified joint petition for the approval consummate a transaction whereby DSLnet will merge into DIECA. As part of the reorganization, Petitioners’ unregulated affiliates MegaPath, Inc. (“MegaPath”), Covad Communications Company (“CCC”), and DSLnet Communications VA, Inc. (“DSLnet-VA”) (DIECA, DSLnet, DSLnet-VA, CCC and MegaPath, collectively the “MegaPath Group”) to merge into DIECA with DIECA surviving. Petitioners state that while they expect the transactions to be accomplished through pro forma corporate mergers, given the tax and operational consequences of the proposed transfer Transactions, Petitioners may alternatively elect to accomplish the transfer through a sale of assets rather than through mergers, or through a combination of both. Therefore, Petitioners request authority to undertake the transfer in either manner. Upon completion of the transaction, DIECA will provide telecommunications services to all of the customers of DSLnet at the same rates, terms, and conditions that they currently receive and after the transaction, DSLnet will surrender its authorization in New Jersey.

BACKGROUND

MegaPath is a Delaware corporation and is the parent company of DSLnet. MegaPath is a wholly owned subsidiary of CCGI Holding Corporation and is provider of various managed Internet Protocol services, including broadband access, Internet mobility and security services. MegaPath does not currently offer any regulated telecommunications services and therefore does not hold any telecommunications authorizations from the Federal Communications Commission (“FCC”) or any state regulatory authority. DSLnet is a Delaware limited liability company with principal offices located in Wallingford, Connecticut. DSLnet is authorized to

provide intrastate telecommunications in forty-seven (47) states and the District of Columbia. DSLnet Communications is authorized to provide switched and dedicated, facilities-based local exchange and interexchange telecommunications services in the State of New Jersey. See Order I/M/O the Petition of DSLnet Communications, LLC, for Authorization to Provide Switched and Dedicated Facilities-Based Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE99020066, dated August 8, 1999. In New Jersey DSLnet has approximately 426 interstate business customers but no intrastate customers. As for employees, DSLnet does not have any located in New Jersey, whereas MegaPath (DSLnet's parent) has 11 employees in New Jersey that will be migrated to DIECA following the transfer.

Covad Communications Group, Inc. ("Covad") is a Delaware corporation that owns Covad Communications Company ("CCC"), a California corporation, and DIECA Communications, Inc. ("DIECA"), a Virginia corporation. Covad, in turn, is a wholly owned subsidiary of CCGI Holding Corporation. Through its operating companies, the company offers various services including DSL, Voice Over IP ("VOIP"), T1, wireless broadband, bundled voice and data services directly through its network and through Internet Service Providers, resellers to small and medium sized businesses and residential customers. According to the petition, Covad's services are currently available in 44 states. In New Jersey, DIECA is authorized to provide intrastate interexchange and local exchange services. See, Order I/M/O the Petition of DIECA Communications, Inc. for Authority to Provide Facilities-Based and Resold Interexchange Toll Service and Facilities-Based and Resold Intrastate Switched, Special Access and Local Exchange Telecommunications Services, Docket No. TE98060350, dated November 4, 1998. CCC does not currently offer any regulated telecommunications services in New Jersey and therefore does not hold any telecommunications authorization from the Board.

DISCUSSION

According to the petition, all of the entities involved are indirect, wholly owned subsidiaries of CCGI Holding Corporation and are operating under a common management structure. Petitioners propose to complete a series of pro forma internal restructuring merger transactions through which DIECA will acquire the assets of MegaPath, DSLnet, DSLnet-VA, and CCC, including their respective customer bases and substantially all of their assets used in the provision of telecommunications services. Upon consummation of the proposed Transactions, DIECA will replace DSLnet as the service provider in New Jersey, and DSLnet will surrender its authority. Petitioners point out that DSLnet does not currently provide any intrastate telecommunications services to its New Jersey customers, and its interstate customers will continue to receive service from DIECA under the same rates, terms and conditions as the services currently provided and therefore the transfer will be seamless and transparent to customers. Petitioners state that the proposed transaction is intended to streamline the operations of the companies, and thereby create operational efficiencies.

Following the Transactions, DSLnet will no longer exist as a corporate entity and therefore, once the Transaction has been completed, DSLnet will cancel its authority in New Jersey.

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; N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees.

FINDINGS AND CONCLUSIONS


After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Additionally, there will be no negative impact on competition. The operations of DSLnet will not be affected by this transaction. Moreover, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen DSLnet's competitive posture in the telecommunications market due to its access to additional resources.

The Board also FINDS that, in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-52, following the closing DIECA is responsible for the filing of DSLnet's final annual report with the Board, and for the payment of any outstanding assessment liabilities to the Board and to the Division of Rate Counsel. Following the closing and once all customers have been transferred to DIECA, DSLnet shall surrender its authority to the Board.

Accordingly, after careful review of this matter, the Board FINDS that the change of control will have no material impact on the rates of current customers, or on employees. The Board also FINDS that the transfer will have no negative impact on the provision of safe, adequate and proper service, and may positively benefit competition. Therefore, after investigation, having considered the petition and exhibits submitted in this proceeding, the Board FINDS that the proposed transfer is in accordance with the law and is in the public interest. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transactions within 7 days of the consummation of the Transaction. The Board FURTHER ORDERS that this approval will expire if the Transaction is not fully consummated on or before November 30, 2012.

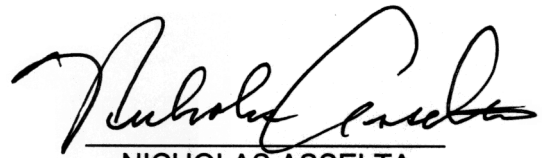
DATED: 11/9/11


BOARD OF PUBLIC UTILITIES
BY:

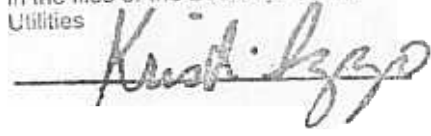

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ATTEST:

KRISTI IZZO
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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