



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

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT PETITION OF)
PEERLESS NETWORK, INC. AND INTELEPEER, INC.) ORDER
FOR APPROVAL OF A TRANSFER OF CONTROL OF)
AN AUTHORIZED TELECOMMUNICATIONS)
PROVIDER) DOCKET NO. TM14010013

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 10, 2014, Peerless Network, Inc. ("Peerless") and IntelePeer, Inc. ("IntelePeer") (collectively "Petitioners"), by their counsel and pursuant to N.J.S.A. 48:2-51.1 and any other applicable provisions of the New Jersey Public Utilities Act and the rules of the New Jersey Board of Public Utilities ("Board"), filed a verified petition requesting authority from the Board in connection with a transaction that resulted in the transfer of control of IntelePeer to Peerless. IntelePeer continues to operate in New Jersey and continues to provide services to its existing customers pursuant to the existing rates, terms, and conditions. Petitioners respectfully request approval of this transaction be granted "nunc pro tunc."

BACKGROUND

IntelePeer, previously a wholly-owned subsidiary of IntelePeer Holdings, Inc.¹, was organized under the laws of the State of Delaware on October 31, 2008. IntelePeer's principal offices are located San Mateo, California. IntelePeer offers communications services using fully managed, hosted, on-demand peering infrastructure to directly exchange voice traffic over traditional TDM networks, as well as over IP, between any application and any telephone device. IntelePeer has authority to provide telecommunications services in forty-five (45) states. In New Jersey, IntelePeer was granted authority to provide local exchange and interexchange telecommunications services. See, In the Matter of the Verified Petition of IntelePeer Inc. for

¹ IntelePeer Holdings is a Delaware holding company with principal offices located in San Mateo, CA.

Authority to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE09110897, Order dated March 17, 2010.

Peerless is a corporation organized under the laws of Delaware with principal offices located in Chicago, Illinois. Peerless, through its subsidiaries, is a local exchange carrier that provides interconnection services throughout the United States. According to the Petition, Peerless relies on IP technology to provide signaling and call setup support for call originating, terminating or traversing its network, and operates as a CLEC, competitive tandem provider and long distance company. Peerless Network of New Jersey, LLC, a subsidiary of Peerless, is certified to provide local exchange services in New Jersey. See, In the Matter of the Petition of Peerless Network of New Jersey, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE08050322, Order dated July 31, 2008. Additional information and qualifications of Peerless can be found in that Order.

DISCUSSION

According to the petition, on November 29, 2013, Peerless entered into an agreement with IntelPeer and its owners whereby Peerless agreed to purchase all of the common stock in IntelPeer. The transaction resulted in IntelPeer becoming a wholly owned subsidiary of Peerless Network Inc., with no resulting transfer of IntelPeer customer accounts, employees and network equipment. Petitioners state that the stock transaction solely affected the identity of the party holding stock in IntelPeer and did not result in the sale, lease, mortgage, encumbrance or other disposition of IntelPeer's property, franchises, privileges or rights, or the assignment away from IntelPeer of any certificates or intrastate telecommunications assets in New Jersey. Petitioners also indicate that IntelPeer has no employees in New Jersey at this time and that service has and will continue to be provided on the same rates, terms and conditions.

The Petitioners state that they regret that they were compelled to close before Board approval; however, they point out that IntelPeer was experiencing exigent financial issues, making the immediate transition of IntelPeer to Peerless critical to ensure continuity of uninterrupted service to IntelPeer's customers.

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 and N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, 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.

The Petitioners state that consummation of the proposed transaction is in the public interest. Petitioners submit that the financial, technical, and managerial resources that Peerless brings to IntelPeer further enhance IntelPeer's ability to compete in the marketplace which will also strengthen competition and consumer choice in New Jersey.

By letter dated January 21, 2014, the Division of Rate Counsel ("Rate Counsel") advised that the Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity. Therefore, Rate Counsel has no objection to Petitioners' requests under their Verified Petition. Id. at 1-2. Regarding the Petitioners' request for *nunc pro tunc* approval, Rate Counsel states that it "has no basis to disbelieve that dire and exigent

circumstances indeed existed to have Joint Petitioners disregard the Board's authority and statutory requirements." Id. at 2.

FINDINGS AND CONCLUSIONS

The Board notes that Petitioners closed upon the Transaction without Board approval. Failure to first secure required Board approval of a transaction is always problematic and can never be encouraged. It would be well within the Board's authority to sanction Petitioners or take other steps for Petitioners' failure to seek approval before closing on the Transaction. Nevertheless, all things considered, and because of Petitioners' verified assertion of exigent circumstances, the Board will consider the request for approval as within time on its merits.

After a thorough review of the petition 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 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 transfer will strengthen IntelPeer's competitive posture in the telecommunications market due to its access to additional resources.

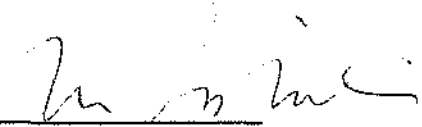
Accordingly, the Board **FINDS** that the proposed reorganization will have no material impact on the rates of current customers or on employees. The Board also **FINDS** that the transfer will have no negative impact on the provision of safe, adequate and proper service, but it will positively benefit competition. Therefore, having considered the record in this proceeding, the Board **FINDS** that the proposed transfer of control is in accordance with the law and in the public interest. The Board **HEREBY APPROVES** the request by Petitioners for the Transaction as within time. This Order shall become effective upon service in accordance with N.J.S.A. 48:2-40.

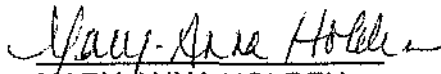
DATED: 3/19/2014

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

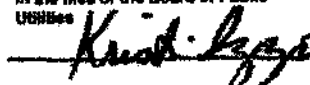

JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

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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