



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

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 VERIFIED JOINT PETITION OF) ORDER
GTT AMERICAS, LLC AND TRANSBEAM, INC. FOR)
APPROVAL TO TRANSFER CONTROL OF)
TRANSBEAM, INC. TO GTT AMERICAS, LLC) DOCKET NO. TM17080926

Parties of Record:

James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On August 23, 2017, GTT Americas, LLC ("GTTA" or "Transferee") and Transbeam, Inc. ("Transbeam") (together, "Petitioners"), submitted a Joint Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 requesting Board approval to transfer control of Transbeam to Transferee and its direct parent company GTT Communications, Inc. ("GTT Parent"). Following consummation of the transaction, Transbeam will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

GTTA is a Delaware limited liability company and a direct, wholly-owned subsidiary of GTT Parent, a Delaware corporation. GTT Parent is a publicly traded company with no majority shareholder. GTT TBI Merger Sub, Inc. ("MergerSub"), a Delaware corporation and direct, wholly owned subsidiary of Transferee, was formed for the purpose of the transaction. GTT Parent, Transferee and MergerSub are headquartered in Mclean, Virginia. GTT Parent, through its subsidiaries (collectively with GTT Parent, the "GTT companies"), including Transferee, are global providers of cloud networking services. GTTA provides regulated and non-regulated interstate and international communications services to customers throughout the United States. Transferee is authorized to provide intrastate telecommunications services in California and New York. Transferee is authorized by the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services. The GTT companies have approximately 24 employees working in New Jersey.

Transbeam is a Delaware corporation with headquarters in New York City, New York. Transbeam does not have a majority owner. Transbeam is a national provider of managed Data, Voice, IT and event solutions for businesses via a wholly owned, next-generation network. Transbeam delivers private wide area network solutions, dedicated Internet access, integrated solutions, LTE wireless solutions and a comprehensive suite of cloud and IT services via its privately owned backbone. Transbeam provides service to business and enterprise customers. In New Jersey, Transbeam is authorized to provide resold and facilities-based local exchange telecommunications services. See In the Matter of the Petition of Transbeam, Inc. for Authorization to Provide Resold and Facilities-Based Local Exchange Telecommunications Services in the State of New Jersey, Docket No. TE00050309 (July 9, 2003). Transbeam has no employees located in New Jersey.

DISCUSSION

Pursuant to an Agreement and Plan of Merger, dated August 20, 2017, by and among GTTA, MergerSub, Transbeam, the principal stockholders of Transbeam, and Sam Kashi, a representative of the stockholders of Transbeam, MergerSub will merge with and into Transbeam, with Transbeam surviving the merger (the "transaction"). As a result, Transbeam will be a direct, wholly owned subsidiary of Transfree and indirect, wholly-owned subsidiary of GTT Parent.

Petitioners state that immediately following the transaction, Transbeam will continue to provide high-quality services at the same rates and on the same terms and conditions as are currently in effect. Any future changes to the rates, terms and conditions of service will be undertaken pursuant to customer contracts and applicable laws. Immediately following closing of the transaction, control of Transbeam ownership will transfer to GTTA and ultimately, GTT Parent.

Petitioners state GTT is managerially, technically and financially qualified to assume ownership and control of Transbeam. Petitioners assert the proposed transaction will serve the public interest by enhancing the ability of Transbeam to serve its customers more effectively and efficiently with enhanced service offerings through combined existing networks and through access to additional financial, technical and managerial resources to compete in the marketplace.

Petitioners requested expedited approval of the Joint Petition in order to allow for the timely closing of the Transaction and the efficient integration of Petitioners' operations concurrently with those of GC Pivotal, LLC d/b/a Global Capacity ("Global Capacity"), which is also being acquired by GTTA. See Verified Joint Petition of GTT Americas, LLC, Pivotal Global Capacity, LLC and GC Pivotal, LLC d/b/a Global Capacity for Approval to Transfer Control of GC Pivotal, LLC to GTT Americas, LLC, Order, Docket No. TM17060688 (Aug. 23, 2017) (the "GTT-Global Capacity Order"). Petitioners assert that expedited approval and closing of the two transactions will enable an efficient, cost-saving integration, and delivery of the combined entity's advanced cloud networking and connectivity services to the New Jersey market without delay.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated August 28, 2017, stating it does not object to approval of the proposed acquisition provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Specifically, as a condition of approval, Rate Counsel urges the that Board require Petitioners to notify the Board and Rate Counsel in writing prior to

effectuating a reduction in New Jersey jobs greater than fifteen percent (15%) throughout a period of three (3) years and provide an appropriate explanation.

By letter dated August 30, 2017, the Petitioners responded to the comments of Rate Counsel. While objecting to the requirement to provide prior notice of a reduction, Petitioners were willing to accept the same condition in the GTT-Global Capacity Order (Docket No. TM17060688). Petitioners noted that, assuming completion of both the GTT-Global Capacity Order transaction and the subject transaction, the GTT companies will have 34 New Jersey employees.

FINDINGS AND CONCLUSIONS

In considering a transfer of control request, the Board shall evaluate the impact of 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.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the combined enterprise would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions. The provision of service quality on competitive offerings is in the public interest. The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. The Board notes that GTT currently employs 24 persons in New Jersey. Petitioners note that there are no immediate plans with respect to these employees. The Board concurs with Rate Counsel that there is a need for the Board to be notified when there is a reduction in staff, consistent with the Board's findings in similar merger reviews, and the Board **FINDS** that the provisions adopted therein are appropriate and should be maintained. The Board, therefore, requires Petitioners to notify the Board, providing an explanation if there is a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) for three (3) years post-issuance of this order. As Petitioners have assured that existing employee retirement plans will be retained, the Board is persuaded, consistent with N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, that Petitioners are not unable to fulfill pension obligations.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law and is not contrary to the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

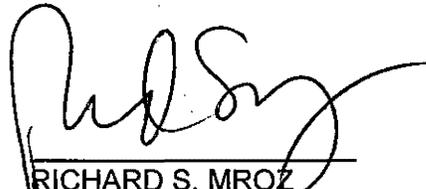
The Order is issued subject to the following provisions:

1. For three (3) years from the issuance of this Order, if there is any net loss of jobs in New Jersey, greater than (15%), Petitioners 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 October 2, 2017.

DATED: 9/22/17

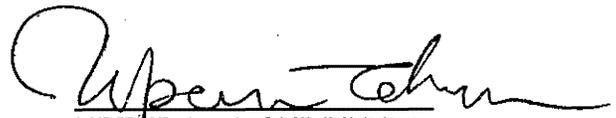
BOARD OF PUBLIC UTILITIES
BY:

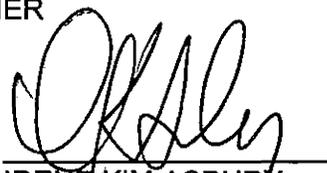

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

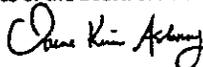

MARY-ANNA HOLDEN
COMMISSIONER


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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