



Agenda Date: 11/10/10
Agenda Item: IVB

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION FOR)
TRANSFER OF CONTROL OF LEXENT)
METRO CONNECT, LLC AND RELATED)
FINANCING)

ORDER OF APPROVAL

DOCKET NO. TM10090675

William K. Mosca, Esq., Bevan, Mosca, Giuditta & Zarillo, P.C., 222 Mount Airy Road, Suite 200, Basking Ridge, New Jersey, for the Petitioners

BY THE BOARD:

On September 13, 2010, Lexent Metro Connect, LLC ("Lexent Metro Connect") and Light Tower Holdings LLC (together, "Petitioners"), pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.S.A. 48:3-9 filed with the New Jersey Board of Public Utilities ("Board") a petition requesting approval for a transaction that will result in the indirect transfer of control of Lexent Metro Connect, to Light Tower Holdings LLC. Petitioners also request Board approval for a related loan transaction ("Financing"). Following the transfer, Lexent Metro Connect will continue to offer services at the same terms, rates and conditions on which it currently offers such services in the state.

BACKGROUND

Lexent Metro Connect is a Delaware limited liability company with principal offices located in New York, New York. Lexent, Inc., a Delaware corporation with principal offices located in New York, New York, owns all of the member interests of Lexent Metro Connect. Lexent Metro Connect owns and operates a fiber optic network located in New Jersey and New York that currently spans over 150 route miles. According to the petition, Lexent Metro Connect leases its fiber facilities to other carriers and to enterprise customers. In New Jersey Lexent Metro Connect is authorized to provide local exchange and interexchange telecommunications services. See, I/M/O the Petition of Lexent Metro Connect, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE09070564, Order dated November 10, 2009.

Light Tower Holdings LLC ("Purchaser") is a Delaware limited liability company, with principal offices located in Boxborough, MA. According to the petition, through its subsidiaries, Purchaser provides Ethernet, dark fiber, wavelengths, SONET, Internet access and collection services throughout the Northeastern United States. Through intermediate subsidiaries, Purchaser is the beneficial owner of all the membership interests in Light Tower Fiber Long Island LLC (formally Keyspan Communications Corporation) ("LTFLI") and is the beneficial owner of all the membership interests in New Jersey DataNet Telecom, LLC ("NJ DataNet"). Both LTFLI and NJ DataNet are authorized by the Board to provide intrastate telecommunications services in New Jersey. See, I/M/O the Petition of Keyspan Communications Corporation for Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE04020089, Order dated September 14, 2004 and I/M/O the Petition of New Jersey DataNet Telecom, LLC for Authority to Provide Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE04111435, Order dated February 1, 2005.

DISCUSSION

Lexent, Inc. and Purchaser entered into an Agreement and Plan of Merger, pursuant to which Purchaser proposes to acquire complete ownership of Lexent, Inc., including, among other things, all of Lexent, Inc.'s interests (the "Interests") in Lexent Metro Connect (the "Transaction"). According to the petition, in accordance with the Transaction, Purchaser intends to create a wholly-owned subsidiary into which Lexent, Inc. will be merged. Lexent, Inc. will be the surviving entity, and will become an indirect subsidiary of Purchaser. Petitioners state that there will be no transfer of Lexent Metro Connect's assets or customers as a result of the Transaction. Lexent Metro Connect will continue to be wholly owned by Lexent, Inc., and Lexent Metro Connect will continue to serve its existing customers under the same rates, terms and conditions as currently provided. Petitioners also state that the transfer of control of Lexent Metro Connect will result in net benefits to Lexent Metro Connect's customers, because its financial stability will be strengthened as it will become an indirect, wholly owned subsidiary of Purchaser as a result, the Transaction will enhance Lexent Metro Connect's ability to offer a broader range of services to New Jersey customers. Petitioners also state that Purchaser intends to maintain substantially similar or greater levels of employee staffing in New Jersey following the Transaction.

The Petition states that in conjunction with the consummation of the Transaction, Purchaser will cause a subsidiary, Light Tower LLC, to enter into a syndicated loan transaction ("Credit Facility") with GE Capital Markets, Inc. and Sun Trust Robinson Humphrey Inc. as the Joint Lead Arrangers. The Credit Facility provides for senior secured facilities comprised of a term loan and a revolving credit facility. Purchaser and its subsidiaries will pledge their respective membership interests in Lexent Metro Connect, LTFLI's and NJ DataNet as security under the Credit Facility and, as subsidiaries of Purchaser, Lexent Metro Connect, LTFLI and NJ Data Net will be required to act as Guarantors under the Credit Facility and to grant to the lenders a security interest in their assets. Petitioners state that proceeds from the Credit Facility will be used to refinance prior indebtedness, finance the Transaction and invest in affiliates operations and networks.

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. In addition, under N.J.S.A. 48:3-9,

the Board must be satisfied that the proposed issue of stocks is to be made in accordance with law and the purpose thereof is approved by the Board.

FINDINGS AND CONCLUSIONS

After careful review of this matter, the Board FINDS that the Transaction will have no negative impact on competition or on the rates of current customers. The Board also FINDS that the Transfer will have no negative impact on the provision of safe, adequate and proper service. Moreover, the Board FINDS that a positive benefit may be expected from Lexent Metro Connect's access to additional resources, which should allow them to better compete in the marketplace. Additionally, the Board is satisfied that the transactions will not have an adverse impact on Petitioner's operations in New Jersey. Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, FINDS that the transaction is in accordance with the law and in the public interest.

Accordingly, the Board FINDS that the proposed Transaction and related loan transaction are in accordance with law and are in the public interest, and HEREBY ORDERS that the Petitioners are HEREBY AUTHORIZED to consummate the Transaction as described herein. The Board HEREBY ORDERS that the Petitioners shall notify the Board of the closing of the proposed transactions within seven (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, 2011.

After review of the proposed financing arrangements described herein, the Board FINDS that the proposed Transaction is consistent with the applicable law and the public interest. The Board therefore, approves the purposes thereof.

The Board HEREBY AUTHORIZES the petitioners to provide their guarantee, serve as co-borrowers, or otherwise provide security in connection with financing.

This order is subject to the following provisions.

- 1 This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.

4. Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangements and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.

DATED: 11/10/10

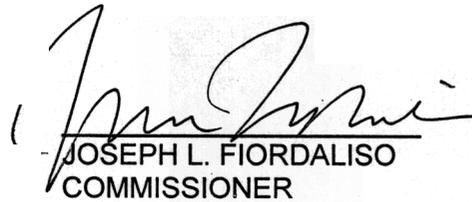
BOARD OF PUBLIC UTILITIES
BY:



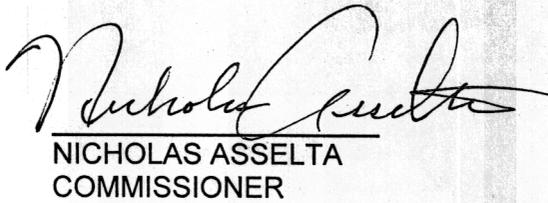
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JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



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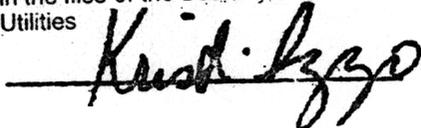
ELIZABETH RANDALL
COMMISSIONER

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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Docket No. TM10090675

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