



Agenda Date: 11/10/10  
Agenda Item: IVC

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center, Suite 801**  
**Newark, NJ 07102**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF  
FIBER TECHNOLOGIES, L.L.C. AND FIREFOX )  
ACQUISITION CORP. FOR APPROVAL OF A )  
TRANSFER OF CONTROL AND RELATED )  
FINANCING )

ORDER OF APPROVAL

DOCKET NO. TM10080620

Dennis C. Linken, Esq., Stryker, Tams & Dill LLP, Two Penn Plaza East, Newark, New Jersey,  
for the Petitioners

BY THE BOARD:

On August 27, 2010, Fiber Technologies Networks, L.L.C., ("Fibertech") and Firefox Acquisition Corp. ("Firefox") (together, "Petitioners"), pursuant to N.J.S.A. 48:2-51.1 and N.J.A.C. 14:1-5.14, filed with the New Jersey Board of Public Utilities ("Board") a petition requesting approval for a transaction that will result in the transfer of control of Fibertech to Firefox (the "Transfer"). Petitioners also request Board approval pursuant to N.J.S.A. 48:3-9, N.J.S.A. 48:3-7 and any other regulations deemed applicable, for Fibertech to participate in certain financing arrangements (the "Financing"). Following the Transfer, Fibertech will continue to offer services at the same terms, rates and conditions on which it currently offers such services in the state.

**BACKGROUND**

Fibertech is a New York limited liability company principal offices located in Rochester, New York. Fibertech is a subsidiary of Fiber Networks, LLC ("Fibertech Networks"). According to the petition, Fibertech Networks, through its various operating subsidiaries, has constructed and operates high-capacity metro area networks to meet the needs of telecommunications carriers, business entities, educational governmental and health-care institutions. In New Jersey, Fibertech is authorized to provide exchange telecommunications services. See, I/M/O the Petition of Fiber Technologies Networks, L.L.C. for Approval to Provide Local Exchange and Inter-Exchange Telecommunications Services within the State of New Jersey, Docket No. TE05080683, dated September 14, 2005.

Firefox is a Delaware corporation formed for the purpose of consummating this transaction and is currently fully owned by funds ("Funds") controlled by Court Square Capital Partners, a New York private equity firm ("Court Square"). Each fund is a limited partnership, controlled and managed by its general partner, Court Square Capital GP, LLC, a Delaware limited liability company ("GP"). Firefox has formed, and holds 100% of the membership interests in Firefox Merger Sub, LLC ("Firefox Merger Sub") which was formed in order to effect the proposed transaction. The petition states that neither Firefox nor its affiliates currently offer any telecommunications authorizations from the Federal Communications Commission or any state authority. It also states that Court Square is an experienced private equity firm and has a management team that with experience in investing in the telecommunications industry.

## DISCUSSION

Fibertech Networks and Firefox entered into a Purchase Agreement ("Agreement") dated as of August 23, 2010, pursuant to which Firefox will acquire ultimate control of Fibertech. Pursuant to the Agreement, Firefox will indirectly acquire 100 percent of the membership interests in Fibertech either by the merger of Firefox Merger Sub with and into Fibertech Networks (with Fibertech Networks surviving) or by causing Firefox Merger Sub to directly acquire 100 percent of the membership interests in Fibertech. As a result of the proposed Transfer, Firefox will become the ultimate owner of Fibertech.

Petitioners state that following the transaction, Fibertech will continue to offer services at the same terms, rates and conditions on which they currently offer such services in the state and as a result, Petitioners claim that the transfer will be seamless and transparent to customers. Petitioners also state that Fibertech's management will continue to be actively involved in its management and operations and no changes in management or operational personnel are expected as a result of the transaction.

Petitioners are also requesting the Board's approval for Fibertech to participate in certain financing arrangements of up to \$260 million. Firefox intends to incur long-term debt obligations, consisting of a term loan of up to \$235 million and a revolving credit facility up to \$25 million. Fibertech will act as a guarantor and will pledge its stock and grant a security interest in its existing and future jurisdictional assets as part of the arrangements for the term loan and revolving credit facility. Proceeds from the term loan and revolving credit facility will be used to replace Fibertech's existing credit facility, to fund the transfer of control from Fibertech's current owners to Firefox, to repay certain existing indebtedness, to make permitted acquisitions, and capital expenditures, to pay fees and expenses in connection with the transactions, to provide ongoing working capital, and for other general corporate purposes.

By letter dated October 7, 2010, the Division of Rate Counsel advised the Board that it recommends approval of the petition.

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 Transfer 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 Fibertech'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 Transfer 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 Transfer 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, 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 up to \$260 million.

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.

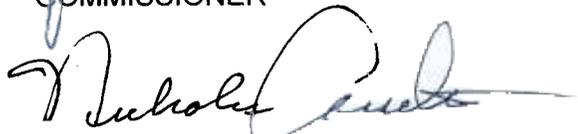
DATED: 11/10/10

BOARD OF PUBLIC UTILITIES  
BY:

  
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PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

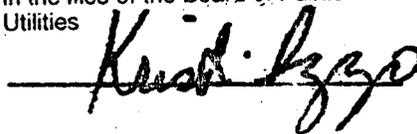
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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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