



Agenda Date: 07/25/18
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 THE VERIFIED JOINT PETITION)
OF CROSS RIVER FIBER LLC. AND ZENFI)
NETWORKS, INC. FOR APPROVAL OF A BUSINESS)
MERGER, TRANSFER OF CONTROL AND CERTAIN)
FINANCING ARRANGEMENTS) ORDER
DOCKET NO. TM18050503

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
William K. Mosca, Esq., of Bevan, Mosca & Giuditta, on behalf of Petitioners

BY THE BOARD:

On May 3, 2018, Cross River Fiber LLC ("CRF") and ZenFi Networks, Inc. ("ZenFi"), and their subsidiaries and affiliates (collectively, "Petitioners"), submitted a Verified Joint Petition with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1, 48:3-10 and N.J.A.C. 14:1-5.9, requesting approval of a transaction in which Zenfi will acquire CRF, and its wholly-owned subsidiary Cross River Fiber NJ, LLC ("CRF NJ") and merge them into ZenFi, through an intermediary Merger Sub and to participate in the equity transfers and financing arising in connection with the transaction. Following the closing, CRF and CRF NJ will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

CRF is a Delaware limited liability company with principal offices located in Morristown, NJ. The petition states that CRF provides custom-designed, scalable and secure high-speed fiber network solutions for carriers, wireless mobility providers and enterprise businesses. Its fiber network extends into key data centers, carrier hotels, enterprise buildings, wireless access points and financial exchanges within New Jersey and New York. Providing dark and lit transport solutions, CRF connects businesses both to private intranets and also to the public Internet.

In New Jersey, CRF is authorized by the Board to provide both resold and facilities based local exchange and interexchange telecommunications services throughout the State. See, I/M/O the Petition of Cross River Fiber, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE12040297,

(June 18, 2012). CRF NJ, a wholly-owned subsidiary of CRF, is a New Jersey limited liability company. The Board has authorized CRF NJ to provide both resold and facilities-based local exchange and interexchange telecommunications services throughout the State. See, I/M/O the Petition of Cross River Fiber, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, BPU Docket No. TE11050320, (July 14, 2011). CRF NJ does not currently provide any regulated end-user telecommunications services in New Jersey.

ZenFi Networks, Inc. is a privately held Delaware corporation whose principal place of business is located in New York, New York. The petition states that ZenFi Networks, Inc. has deployed a purpose-built fiber network focused on cellular fronthaul/backhaul, Distributed Antenna Systems ("DAS") small cell deployments, and wholesale fiber. In New Jersey ZenFi is authorized to provide facilities-based and resold local exchange and interexchange services. See, I/M/O ZenFi Networks, Inc's Verified Petition to Provide Resold and Facilities-Based Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE14080907, (September 30, 2014). Further information and qualifications of ZenFi can be found in that Order. ZenFi does not provide any regulated end-user telecommunications services in New Jersey.

The granting of competitive local exchange ("CLEC") authority to CRF NJ and ZenFi conveys certain rights and privileges upon them, which are reserved for the provision of facilities-based landline services. While CLECs may also provide other telecommunications services, such as wireless, small cell or distributed antenna systems, these service offerings are beyond the scope of Board jurisdiction and the granting of CLEC authority. Specifically, the Board granting of CLEC authority is limited to the provision of competitive facilities-based local and interexchange services. To the extent that a CLEC provides non-regulated telecommunications services, the CLEC benefits, rights or privileges are not applicable to those non-regulated services.

On April 13, 2018, CRF and ZenFi entered into a Merger Agreement ("Agreement"), under which ZenFi will acquire CRF and CRF NJ in exchange for an ownership interest in ZenFi that will represent approximately 42.6% of the total outstanding ownership interests of ZenFi after giving effect to such issuance. ZenFi will acquire CRF by merging CRF with and into ZenFi Merger Sub Inc., a Delaware corporation ("Merger Sub"), which is a wholly-owned subsidiary of ZenFi created solely to allow for the Merger. As a result of the Merger the separate existence of Merger Sub will cease, and CRF will survive the Merger as a wholly-owned subsidiary of ZenFi.

The petition states that several related Transactions will occur during the consummation of the Merger. First, CRF's equity interests outstanding immediately prior to the Merger will be converted into the right to receive newly-issued shares of ZenFi common stock; and as a result, the CRF's current owners will become partial owners of ZenFi. Second, immediately following the Merger, ZenFi will convert from a Delaware corporation to a Delaware limited liability company (the "Conversion"), whereupon each share of ZenFi common stock (including the newly-issued shares then held by CRF's former owners as a result of the Merger) will be converted into interests in the ZenFi limited liability company. The third transaction will also occur upon the consummation of the merger. CRF and ZenFi anticipate entering into a new credit facility (the "Credit Facility"). Among other things, this Credit Facility will refinance the respective CRF and ZenFi current indebtedness; finance fees and expenses associated with the transaction; and provide general liquidity for operating purposes. ZenFi will secure the Credit Facility by a pledge of certain equity interests, as well as offering a first priority lien on substantially all of the assets and property of ZenFi, CRF and their subsidiaries. The Credit

Facility will provide for up to \$69,000,000 in financing to ZenFi in the form of a \$15,000,000 Senior Secured Revolver, a \$32,000,000 Senior Secured Term Loan and a \$22,000,000 Senior Secured Delayed Draw Term Loan. The initial lenders under the Credit Facility will be Webster Bank, N.A. and CoBank, ACB, with Webster Bank, N.A. acting as the administrative agent.

The merger transaction will not involve a change of service provider for any CRF, ZenFi or CRF-NJ customers and therefore be transparent to those customers. All three entities will retain their respective authorizations to provide telecommunications services within the State of New Jersey. The petition avers that the proposed Merger and Transactions are designed to bring the companies together into a streamlined organizational structure and have no impact beyond increasing efficiency of business operations, the types of services provided by the individual businesses and the geographic reach of the individual businesses. Further, the Petitioners anticipate customers will benefit from the enhanced access of ZenFi, CRF and CRF NJ to capital and the availability of additional management expertise following the Merger and greater operational efficiency as a result of the combination. Petitioners also state that ZenFi, CRF and CRF-NJ will continue to provide uninterrupted service to its customers and therefore the Board's Mass Migration rules, N.J.A.C. 14:10-12.1, et seq., do not apply. To the extent that the Board determines otherwise, Zenfi, CRF and CRF-NJ request a waiver from the notification and other requirements of the Mass Migration rules.

Petitioners also state that all employees will be retained in this Merger and Transactions, and nothing in this process will impact the provision of safe and adequate utility service at just and reasonable rates. In satisfaction of the requirements of N.J.S.A. 48 :3-7 and N.J.S.A. 48 :3-1 0, this merger and its related Transactions will have no impact upon the ability of the Petitioners to satisfy pension benefits previously enjoyed by any employee in either entity.

Petitioners request a waiver of the notice requirement of N.J.A.C. 14:1-5.14(b)(12). Petitioners assert that they provide telecommunications services to large enterprise customers and other telecommunications service providers, all of whom are sophisticated, commercial parties who will remain customers post-closing of the Transaction in accordance with the terms of their customer service agreements with Petitioners, and who will be advised of the Transaction in accordance with the terms and conditions of their customer service agreements, thereby making compliance with this rule unnecessary.

Petitioners also state that they do not expect the transaction or the proposed financing to result in a change to their existing management or employees in New Jersey. Petitioners further assert that neither the transaction nor the financing will have any adverse impact on any pension benefits of such employees.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated May 15, 2018, stating it does not oppose Board approval of Petitioners' request in this filing. Further, Rate Counsel concurs with the Petitioners that the particular facts herein do not trigger application of the Board's mass-migration rules and customer notification under the rules could lead to unnecessary customer confusion.

DISCUSSION, 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.

As to the request for a waiver of the notice requirements of N.J.A.C. 14:1-5.14(b)(12), the Board **FINDS** that Petitioners have demonstrated good cause for the waiver because Petitioners serve sophisticated, commercial parties who will remain customers post-closing of the Transaction in accordance with the terms of their customer service agreements, and who will be advised of the Transaction in accordance with same. Notably, while the Transaction will result in changes in the equity ownership of CRF and ZenFi, it is not expected to change or affect the day-to-day operations or customer-facing activities of the entities. For these reasons, Petitioners' request for a waiver of N.J.A.C. 14:1-5.14(b)(12) is **HEREBY GRANTED**.

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.

As to the proposed financing arrangements, the Board **FINDS** that the proposed transaction will not have a negative impact on competition, the rates of current customers, or New Jersey employees. Therefore, after investigation and consideration of the record and information submitted in this proceeding, the Board **FINDS** that the expanded financing arrangements are in accordance with the law and in the public interest, and **HEREBY AUTHORIZES** Petitioners to participate in financing arrangements up to an aggregate amount of \$69 million, and to take those actions necessary to effectuate such financing arrangements.

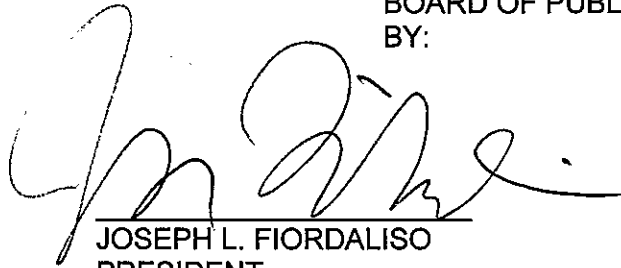
This Order is issued subject to the following provisions:

1. 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.
2. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting Petitioners.
3. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.

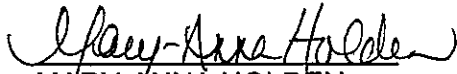
This Order shall be effective August 4, 2018.

DATED: 7/25/18

BOARD OF PUBLIC UTILITIES
BY:



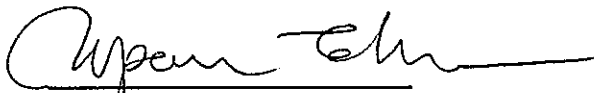
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MARY-ANNA HOLDEN
COMMISSIONER



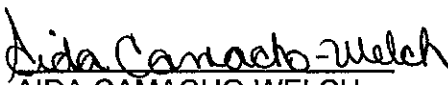
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UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

**IN THE MATTER OF THE VERIFIED JOINT PETITION OF CROSS RIVER FIBER LLC. AND ZENFI NETWORKS, INC. FOR APPROVAL OF A BUSINESS MERGER, TRANSFER OF CONTROL AND CERTAIN FINANCING ARRANGEMENTS
DOCKET NO. TM18050503**

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