



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)
EXTENET SYSTEMS, INC. AND HUDSON FIBER) ORDER
NETWORK INC. FOR APPROVAL TO TRANSFER)
INDIRECT CONTROL OF HUDSON FIBER NETWORK)
INC. TO EXTENET SYSTEMS, INC.) DOCKET NO. TM18060612

Parties of Record:

Dennis Linken, Esq., Scarinci & Hollenbeck, LLC., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On June 4, 2018, ExteNet Systems, Inc. ("ESI") and Hudson Fiber Network Inc. ("HFN") (collectively, "Petitioners"), submitted a 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 indirect control of HFN to ESI.¹ Following closing of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to HFN customers.

BACKGROUND

ESI is a privately held Delaware corporation and a direct, wholly owned subsidiary of Odyssey Acquisition, LLC ("Odyssey"), a Delaware limited liability company. The executive office of ESI is located in Lisle, Illinois. Odyssey is an indirect, wholly owned subsidiary of Mount Royal Holdings, LLC ("Parent"), a Delaware limited liability company. Parent has executive offices located in Boca Raton, Florida. Parent has no majority owner, but rather is owned by multiple private equity firms and certain individuals in management of ESI. The petition states that ESI

¹ In a separate filing (BPU Docket Number TF18060613 or "Financing Petition") petitioners seek approval for HFN to participate in certain financing arrangements concurrently with or following completion of this transaction.

designs, builds, owns and operates distributed networks for use by national and regional wireless service providers ("WSPs") in North America. Using distributed antenna systems (DAS), small cells, Wi-Fi and other technologies, ESI and its subsidiaries (collectively with Odyssey, "ExteNet") deploy distributed networks to enhance coverage and capacity and enable wireless service in both outdoor and indoor environments.

According to the petition, ESI is authorized to provide services in the District of Columbia and 43 states and operates distributed networks in Alabama, Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. In New Jersey, ESI (f/k/a ClearLinx) is authorized to provide local exchange and interexchange services. See, In the Matter of the Petition of ClearLinx Network Corporation for Approval to Provide Local Exchange and Interexchange Telecommunications Services within the State of New Jersey, Docket No. TE05121059 (April 13, 2006). The petition states that ESI has nine employees that reside in New Jersey and ten employees that work in New Jersey. Further, ESI does not have a pension plan; however, the transaction will have no impact on the retirement benefit plan(s) offered to those employees.

HFN is a New Jersey corporation with its principal place of business in Paramus, New Jersey. HFN is a direct, wholly owned subsidiary of Hudson Fiber Holdings, Inc. ("HF Holdings"), a Delaware corporation. Tiger Infrastructure Partners Fund LP ("Tiger"), a Delaware limited partnership, directly owns a majority of the stock of HF Holdings. The remainder of the stock of HF Holdings is held by: (a) TIGER INFRASTRUCTURE PARTNERS CO-INVEST B LP ("Tiger Co-Invest B"), a Delaware limited partnership, which is a vehicle for institutional investors controlled by Tiger; (b) seven individuals that are management or board members of HFN; and (c) Meritage Opportunity Fund, LLC. Tiger is a middle-market private equity firm based in New York and London. According to the petition, Tiger invests in energy, transportation and communications infrastructure businesses and related sectors. HFN provides communications solutions to global trading enterprises, principally utilizing trading and communications equipment interconnected using resold private lines or IP-based transport services. HFN provides its systems and services to financial services firms, as well as to public safety, government, power, energy and utility, and transportation organizations. In New Jersey, Hudson Fiber is authorized to provide local exchange and interexchange telecommunications services. See, In the Matter of the Petition of Hudson Fiber, Inc. for Approval to Provide Local Exchange and InterExchange and Telecommunications Services Throughout the State of New Jersey, Docket No. TE10050365 dated August 18, 2010. Additional information of Hudson Fiber may be found in that Order. HFN has approximately 30 employees in New Jersey.

The granting of competitive local exchange ("CLEC") authority conveys certain rights and privileges upon ESI and HFN, 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.

DISCUSSION

As described in the petition, pursuant to a stock Purchase Agreement, by and among ESI; ESI Merger Sub, Inc. (a direct, wholly owned subsidiary of ESI created for purposes of the merger) ("Merger Sub"); Fiber, Holdings, HFN; and Tiger (solely in its capacity as the Securityholder Representative), ESI will acquire all of the outstanding equity interests in HFN (the "Transaction"). Specifically, Merger Sub will merge with and into HF Holdings, whereupon the separate existence of Merger Sub will cease and HF Holdings will survive as a direct, wholly owned subsidiary of ESI. As a result, HFN will be an indirect, wholly owned subsidiary of ESI.

Following the Transaction, HFN will continue to offer services at the same rates and on the same terms and conditions as currently provided.

Petitioner contends that the transaction described herein is consistent with and will serve the public interest. The financial, technical, and managerial resources of ESI are expected to enhance HFN's ability to compete in the communications marketplace in New Jersey. Petitioners assert that the transaction is expected to be transparent to HFN's customers and is not expected to result in the discontinuance, reduction, loss or impairment of service to any customer. Combining the existing networks and capabilities of ESI and HFN will enhance their ability to serve customers effectively and efficiently. Petitioners state that the Transaction will expand ESI's business operations and asset portfolio, thereby establishing a stronger and more diversified competitor in the telecommunications market. Additionally, with regard to employment, a factor the Board considers pursuant to N.J.S.A 48:2-51.1, and the ability of a utility to fulfill pension obligations to its employees pursuant to N.J.S.A 48:3-10, Petitioners advise that, as of this filing, they have not engaged in any material integration planning. As a result, no plans with regard to the New Jersey employees of Petitioners have been developed at this time. Further, HFN does not have an employee pension plan. Petitioners add that the employees' existing rights in any other retirement benefit plan offered by HFN will be retained upon completion of the Transaction.

The New Jersey Division of Rate Counsel submitted comments by letter dated June 7, 2018, stating it does not oppose 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 that the Board require Petitioners to notify the Board and Rate Counsel, providing an appropriate explanation in writing within a minimum of thirty days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%), throughout a three (3) year period following approval.

By letter dated June 14, 2018, Petitioners object to the proposal by Rate Counsel stating that such a condition requiring prior notice is not consistent with the Board's prior decisions in other transfer of control transactions in substantially identical circumstances involving other competitive providers serving the New Jersey market. Petitioners state that Rate Counsel's proposal for advance notice, if adopted would be significantly more burdensome on Petitioners than a requirement to notify the Board after the fact. Imposing an advance notice requirement would place Petitioners at a competitive disadvantage compared to other authorized providers operating in the same market but not subject to such a requirement. Further, Petitioners note that Rate Counsel's proposal is not consistent with what the Board has ordered in similar dockets where the Board has required companies to report after the fact, for three years following closing, headcount reductions in New Jersey greater than 15%.

FINDINGS AND CONCLUSIONS

Pursuant to N.J.S.A. 48:2-51.1(a), the Board shall evaluate the impact of an acquisition of control of a public utility 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. 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 as set forth above. 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 benefits 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 following the proposed Transaction, the Petitioners 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 and the provision of service quality on competitive offerings is in the public interest.

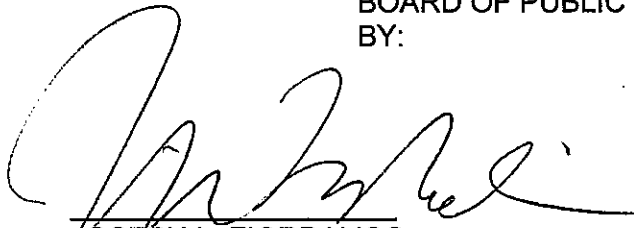
The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. Petitioners stated that they have not engaged in any material integration planning. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See, In the Matter of the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, providing a written explanation if there is a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a 3-year period after the date of closing. Petitioners have noted, that HFN does not have an employee pension plan, however employees' existing rights in any other retirement benefit plan will be retained upon completion of the Transaction. HFN employees may be able to rollover pre-closing contributions to their existing retirement benefits plan into another qualified benefit plan such as an individual retirement rollover account or an ESI retirement benefits plan.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioner to complete the proposed transaction.

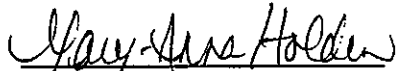
This Order shall be effective August 4, 2018.

DATED: 7/25/18

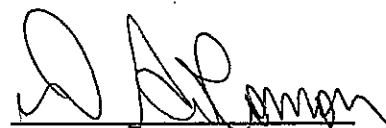
BOARD OF PUBLIC UTILITIES
BY:



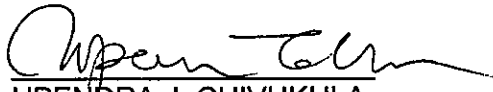
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



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.

**I/M/O VERIFIED JOINT PETITION OF EXTENET SYSTEMS, INC. AND HUDSON FIBER NETWORK INC. FOR APPROVAL TO TRANSFER INDIRECT CONTROL OF HUDSON FIBER NETWORK INC. TO EXTENET SYSTEMS, INC.
DOCKET NO. TM18060612**

SERVICE LIST

Dennis C. Linken
Scarinci & Hollenbeck, LLC
1100 Valley Brook Avenue
Lyndhurst, NJ 07071-0790
dlinken@sh-law.com

Catherine Wang
Brett P. Ferenchak
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 200004
catherine.wang@morganlewis.com
brett.ferenchak@morganlewis.com

H. Anthony Lehv
General Counsel
ExteNet Systems, Inc.
3030 Warrenville Road, Suite 340
Lisle, IL 60532
alehv@extenetsystems.com

Andrew M. Klein
Allen C. Zoracki
Klein Law Group PLLC
1250 Connecticut Avenue N.W.
Suite 700
Washington, DC 20036
aklein@kleinlawpllc.com
azoracki@kleinlawpllc.com

Brett Diamond
Chief Executive Officer
Hudson Fiber Network Inc.
12 North State Route 17, Suite 120
Paramus, NJ 07652
bdiamond@hudsonfiber.com

Stefanie A. Brand, Esq.
Maria Novas-Ruiz, Esq.
Director, Division of Rate Counsel
140 Front Street, 4th Floor
Trenton, NJ 08625
sbrand@rpa.state.nj.us
mnovas-ruiz@rpa.state.nj.us

Lawanda R. Gilbert, Director
Rocco Della Serra
Board of Public Utilities
Office of Cable Television and
Telecommunications
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
lawanda.gilbert@bpu.nj.gov
rocco.della-serra@bpu.nj.gov

Geoffrey R. Gersten, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101
Geoffrey.gersten@law.njoag.gov

Carol Artale, Esq.
Deputy Chief Counsel
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
carol.artale@bpu.nj.gov