



Agenda Date: 10/29/18
Agenda Item: IVC

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) ORDER
OF CROWN CASTLE FIBER LLC, CROWN CASTLE)
NG EAST (DE) LLC, FIBER TECHNOLOGIES)
NETWORKS, L.L.C., LIGHTOWER FIBER NETWORKS)
I, LLC AND SUNESYS, LLC FOR (1) APPROVAL OF A)
PRO FORMA CONSOLIDATION AND (2) WAIVER OF)
MASS MIGRATION RULES) DOCKET NO. TM18080900

Parties of Record:

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

BY THE BOARD:

On August 16, 2018, Crown Castle LLC. ("Crown Fiber"), Crown Castle NG East LLC, registered in New Jersey as Crown Castle NG (DE) LLC ("CCNG-East") LTS Group Holdings LLC ("Transferor"), Fiber Technologies Networks L.L.C. ("Fibertech"), Lightower Fiber Networks I, LLC ("LFN-1"), and Sunesys, LLC ("Sunesys")(collectively, the "Petitioners") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-7, filed a verified petition with the Board of Public Utilities ("Board") requesting approval for a Pro Forma consolidation that will result in (1) consolidation of CCNG-East, Fibertech, LFN-1, and Sunesys (together, the "Consolidating Entities") into Crown Fiber (the "Consolidation"); and (2) changes in the ownership chains of Crown Fiber and CCNG-East. Petitioners are also requesting, to the extent necessary, a waiver of the Board's mass migration rules.

BACKGROUND

Petitioners are indirect, wholly owned subsidiaries of Crown Castle International Corp. ("CCIC"), a publicly traded Delaware corporation. Crown Fiber (f/k/a Lightower Fiber Networks II, LLC) is a New York limited liability company. FiberTech is a New York limited liability company. CCNG-East, LFN-1 and Sunesys are Delaware limited liability companies. Petitioner's headquarters is located in Houston, Texas. Petitioners and their affiliates are authorized to provide telecommunications services in the District of Columbia and all states except Alaska, Montana and Wyoming.

In New Jersey, Crown Fiber is authorized to provide facilities-based and interexchange services and facilities-based dedicated and private line communications pursuant to authority granted by the Board. See, I/M/O the Petition for an Order Authorizing Consolidated Edison Communications, Inc. to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00100802 (November 5, 2001). Authority was originally granted to Con Edison Communications, LLC, which changed its name to RCN New York Communications, LLC, which subsequently changed its name to Sidera Networks, LLC then to Lightower Fiber Networks II, LLC, and more recently to Crown Castle Fiber LLC. See BPU Docket No. TT15020144.

CCNG-East (f/k/a NextG Networks of NY, Inc.) is authorized to provide facilities based (both switched and dedicated) local exchange, exchange access, interexchange and private line telecommunications. See, I/M/O the Verified Petition of NextG Networks of NY, Inc. d/b/a NextG Networks East for Authority to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE04111434 (February 1, 2005).

Fibertech is authorized to provide facilities-based and interexchange 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 (September 14, 2005)

LFN-1 is authorized to provide facilities based and local exchange and interexchange services. 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 (September 14, 2004). Authority was originally granted to KeySpan Communications Corp., which merged with and into Light Tower Fiber Long Island, LLC ("LTF-LI"), with LTF-LI as the surviving entity. See BPU Docket No. TM08040212. LTF-LI subsequently changed its name to Lightower Fiber Networks I, LLC. See BPU Docket No TT14111292.

Sunesys is authorized to provide local exchange and interexchange telecommunications services pursuant to authority granted by the Board. See, I/M/O the Petition for an Order Authorizing Sunesys, Inc. to Provide Local Exchange and Inter-Exchange Telecommunications Services throughout New Jersey, Docket No. TE00040261 (May 9, 2001).

The petition states that the Petitioners do not have any employees of their own; however CCIC has approximately 159 employees located in New Jersey, approximately 120 of which perform services for the Petitioners.

DISCUSSION

The petition states that the Consolidation will involve a series of planned intra-company transactions whereby certain of Crown Fiber's operating company affiliates will be consolidated into Crown Fiber and certain of Crown Fiber's parent companies will also be consolidated. Petitioners state that the Consolidation is being undertaken, in part, to streamline the corporate structure and operations of over 20 operating entities of CCRC that provide fiber-based services into a single unified and rebranded operating entity, Crown Castle Fiber LLC. Although ultimately CCNG-East is expected to be consolidated into Crown Fiber, the petition states that CCNG-East initially may be retained as a separate entity upon completion of the Consolidation of Fiber Tech, LFN I and Sunesys. The series of planned intra-company transactions will also

involve a change in the intermediate corporate holding company structure between CCIC and Crown Fiber and CCNG-East. Upon completion of the Consolidation, Crown Fiber will be a direct, wholly owned subsidiary of Crown Castle Fiber Holdings Corp., a Delaware corporation, which is currently a Delaware limited liability company named LTS Group Holdings, LLC¹ and a direct, wholly owned subsidiary of Crown Castle Operating Company ("CCOC"). CCOC is a Delaware corporation and a direct, wholly owned subsidiary of CCIC, a publicly traded corporation that is incorporated under the laws of the State of Delaware.

Petitioners state that immediately following the completion of the Consolidation, the Consolidating Entities will cease to exist and Crown Fiber will provide the fiber-based services to the existing customers of the Consolidating Entities pursuant to the same contracts and other service arrangements those customers currently have with the Consolidating Entities. All customers will be notified of the Consolidation. Petitioners state that following the Consolidation, the Consolidating Entities will provide the Board a notice of withdrawal of their tariffs as currently posted on Crown Fiber's website, along with a request that the Board cancel their authorities to provide telecommunications services in New Jersey.

In connection with the migration of customers, Petitioners request a waiver of the Board's mass migration rules, see N.J.A.C. 12:10-12.1 et seq. Petitioners note that all of the Consolidating Entities' customers are commercial entities or other carriers receiving service under individually negotiated contracts and therefore would not be considered mass market service customers. The petition states that rates, terms and conditions of customers' services will not change as a result of these intra-company changes. Customers are currently invoiced by the Consolidating Entities under their respective names so the only change for customers will be that invoices following completion of the Consolidation will be sent using the Crown Castle Fiber name. All customers will be notified by letter of the Consolidation pursuant to their contracts with the Consolidating Entities.

Petitioners state that the transaction will simplify CCIC's existing corporate structure, reduce its reporting and accounting burdens and provide other operational efficiencies. The Consolidation will allow CCIC's business units to take advantage of their core focus and strengths to the benefit of their customers. Petitioners also state the proposed simplification of CCIC's corporate structure will provide the company with greater flexibility for future equity and debt transactions, which will increase its access to capital and benefit Crown Fiber and the Consolidating Entities' customers.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated September 28, 2018, stating it does not oppose approval of the proposed transfer 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 of the consolidation.

By letter dated October 5, 2018, Petitioners responded to the comments of Rate Counsel. Petitioners note that Rate Counsel's proposal is not consistent with the Board's prior decisions

¹ As part of the Consolidation, LTS Group Holdings, LLC will convert from a Delaware limited liability company into a Delaware corporation and be renamed Crown Castle Fiber Holdings Corp. Crown Castle Fiber Holdings Corp. will be a direct, wholly owned subsidiary of CCOC.

in other similar internal consolidations where the Board has not imposed such a condition. Moreover, the letter notes that the Petitioners are already subject to a requirement to report (after the fact), for three years following closing, headcount reductions in New Jersey greater than 15%. See I/M/O Verified Joint Petition of Crown Castle International Corp., Transferee, LTS Group Holdings LLC, Transferor, and Fiber Technologies Networks L.L.C., Lightower Fiber Networks I, LLC and Lightower Fiber Networks II, LLC, Licensees, for Approval to Transfer Indirect Control of Licensees to Crown Castle International Corp., Docket No. TM17080830, Order at 4 (October 20, 2017). Petitioners suggest that there is no need for the Board to extend this condition but will abide by such extension if imposed by the Board.

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

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. 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 benefits 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 commercial entities who will remain customers post-closing of the Consolidation in accordance with the terms of their customer service agreements, and who will be advised of the Consolidation in accordance with same. Further, ownership, control and management policies will remain the same following the Consolidation. 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 Consolidated Entities 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 Petitioners' parent, CCIC, has approximately 159 employees located in

New Jersey of which 120 perform services for the Petitioners. While Rate Counsel seeks notice prior to any reduction, Board precedent requires companies to provide notice and explanation to the Board following any 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. TM17040433 (June 30, 2017). There is no reason to disturb Board precedent requiring subsequent notice of employee reductions based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, providing a written explanation following a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a three -year (3) period after the date of closing.

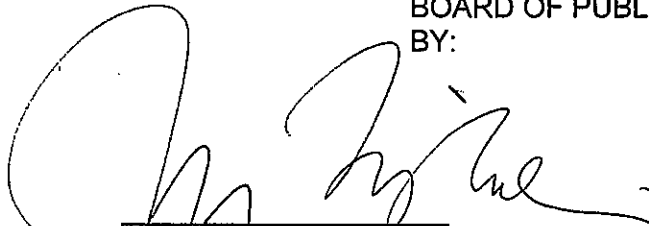
Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law and is not contrary to the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete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

Consummation of the above referenced transaction must take place no later than one-hundred-eighty (180) days from the date of this Order unless otherwise extended by the Board.

This Order shall be effective November 8, 2018.

DATED: 10/29/18

BOARD OF PUBLIC UTILITIES
BY:



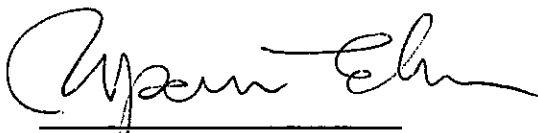
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PRESIDENT




MARY-ANNA HOLDEN
COMMISSIONER



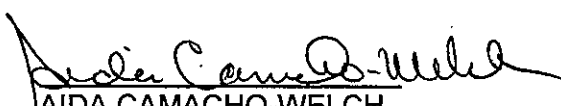
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ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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LIGHTOWER FIBER NETWORKS I, LLC AND SUNESYS, LLC FOR (1) APPROVAL OF A
PRO FORMA CONSOLIDATION AND (2) WAIVER OF MASS MIGRATION RULES
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