



Agenda Date: 8/19/09
Agenda Item: IVB

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

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
OF BIRCH COMMUNICATIONS, INC. AND CLEARTEL)
TELECOMMUNICATIONS, INC. d/b/a NOW)
COMMUNICATIONS, CLEARTEL COMMUNICATIONS,)
ESSEX TELECOMMUNICATIONS, AND VERANET)
SOLUTIONS FOR APPROVAL OF TRANSFER OF)
ASSETS, AND REQUEST FOR CONFIDENTIAL)
TREATMENT)

ORDER OF APPROVAL

DOCKET NO. TM09050385

(SERVICE LIST ATTACHED)

BY THE BOARD:

On May 18, 2009, Birch Communications, Inc., ("Birch" or "Purchaser") and Cleartel Telecommunications, Inc. d/b/a Now Communications, Cleartel Communications, Essex Telecommunications, and VeraNet Solutions ("CTI") (collectively "Petitioners") by their counsel and pursuant to N.J.S.A. 48:3-7, filed a petition with the Board of Public Utilities ("Board") requesting approval to consummate an asset purchase agreement ("Agreement" or "Transaction"). Birch and Cleartel Communications, Inc. ("CCI") (CCI and CTI together, the "Sellers") and certain of its subsidiaries including CTI entered into an Agreement as of April 29, 2009 under which Birch will purchase certain assets from Sellers including: personal property, intellectual property, customer contracts and leases used in connection with CTI's local and long distance voice and data services in New Jersey. Upon completion of the transaction, Birch will provide telecommunications services to all of the customers of CTI at the same rates, terms, and conditions that they currently receive and after the migration of customers to Birch, CTI will surrender its authorization in New Jersey by a separate filing. Petitioners also requested a waiver of the advertising requirement in N.J.A.C. 14:1-5.6(b), but subsequently withdrew that request.

BACKGROUND

CTI is a Delaware corporation and a wholly owned subsidiary of CCI, a Delaware corporation. CCI, through CTI and its other subsidiaries, offers local, Internet and long distance services to both residential and business users in 30 states. In New Jersey, CTI (formally known as Essex Acquisition Corp) was authorized to provide local exchange and interexchange telecommunications.

See Order I/M/O the Petition of Essex Acquisition Corp. for an Expedited Order Authorizing the Provision of Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE02100775, dated December 18, 2004.

Birch is a privately held Georgia corporation with headquarters located in Atlanta, Georgia. Birch was created as the result of an acquisition of Birch Telecom, Inc. by Access Integrated Networks in February 2008. According to Petitioners, Birch and its predecessor entities have been providing telecommunications services throughout the United States since 1996. Currently, Birch provides local exchange and interexchange telecommunications services to both business and residential customers in 30 states. In a separate filing, Birch was granted authority to provide local exchange and interexchange telecommunications services in New Jersey on July 1, 2009, See Order I/M/O Birch Communications Inc., Petition for Authority to Provide Local Interexchange Telecommunication Services within the State of New Jersey, Docket No. TE09040307. Additional information and qualifications of Birch can be found in that Order.

DISCUSSION

On April 29, 2009, Sellers entered into the Agreement with Purchaser under which Birch will purchase for cash and promissory notes Sellers' right, title and interest to certain assets including customer contracts and leases used in connection with Seller's local and long distance voice and data services in New Jersey. Upon consummation of the transaction, CTI will continue to exist as a company having no relationship to Birch and will no longer offer telecommunications services in New Jersey. The petition states that after Sellers determine that CTI no longer needs its authorization for operational or billing purposes, they will surrender its authorization in a separate filing. According to the petition, Birch will serve CTI's CTI customers through existing and new product offerings and will file any necessary tariff revisions to maintain CTI's current tariffed service offerings. Petitioners emphasize that the transfer of customers to Birch will have no adverse impact on those customers. The affected customers will continue to receive their existing services at the same rates, terms, and conditions that they have prior to the transfer. CTI has no employees in New Jersey.

By letter dated July 24, 2009, Petitioners withdrew the request for a waiver of the advertising required in N.J.A.C. 14:1-5.6(b). Petitioners state that the waiver is no longer necessary because since the request was made, Birch has received authority to provide telecommunications services in the state and thereby has become subject to the jurisdiction of the Board.

Along with this filing, as required by N.J.A.C. 14:10-12, Petitioners submitted information showing their compliance with the Board's mass migration rules. Staff notes that Petitioners are in compliance with the mass migration rules. Petitioners note that the customers will receive the required notification consistent with the advance notice requirements in N.J.A.C. 14:10-12.3. Birch will acquire all of the existing customers of CTI, with the exception of those that choose a different service provider.

By letter dated May 29, 2009, the Division of Rate Counsel advised the Board that it recommends approval of the petition.

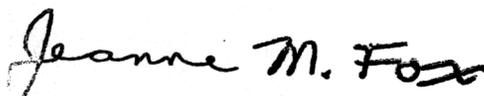
FINDINGS AND CONCLUSIONS

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, and moreover, a positive benefit may be expected from the introduction of new product offerings. 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.

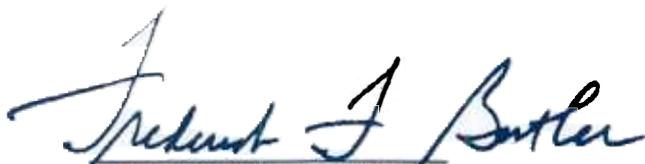
The Board further FINDS that Birch is in compliance with the mass migration rules. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. The Board FURTHER ORDERS that the approval in this Order shall become null and void and of no effect to the extent it has not been exercised prior to August 30, 2010.

DATED: 8/19/09

BOARD OF PUBLIC UTILITIES
BY:



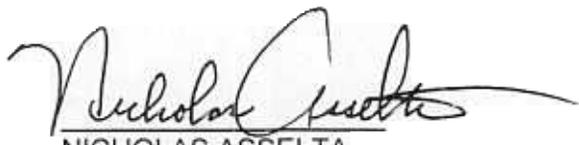
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER

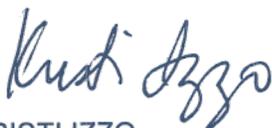


NICHOLAS ASSELTA
COMMISSIONER



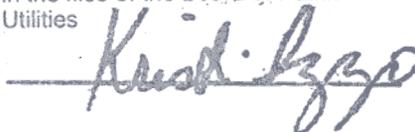
ELIZABETH RANDALL
COMMISSIONER

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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Docket No. TM09050385

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