



Agenda Date: 06/13/08
Agenda Item: IVD

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

TELECOMMUNICATIONS

IN THE MATTER OF THE JOINT PETITION OF)	ORDER
LIGHT TOWER FIBER LLC AND KEYSpan)	
COMMUNICATIONS CORP. FOR APPROVAL)	
OF A CHANGE IN CONTROL)	DOCKET NO. TM08040212

(SERVICE LIST ATTACHED)

BY THE BOARD:

On April 8, 2008, Light Tower Fiber LLC ("Light Tower Fiber"), and KeySpan Communications Corp. ("KCC") (collectively "Petitioners") filed a verified Petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, N.J.S.A. 48:3-9 and the implementing Board regulations, requesting approval of the acquisition by Light Tower Fiber of all of the membership interests of KCC, an authorized provider of intrastate telecommunications service.¹ In connection with the proposed acquisition, KCC will be reconstituted as Light Tower Fiber Long Island LLC ("Light Tower Fiber Long Island"). Following the acquisition, Light Tower Fiber Long Island, the acquired entity, will continue to offer services at the same terms, rates and conditions under which it currently offers such services in the State. In addition, Petitioners also request a waiver of the public notice requirements of N.J.A.C. 14:1-5.14(b)(12).

BACKGROUND

Light Tower Fiber is a Delaware limited liability company, with principal offices located in Boxborough, Massachusetts. It is a wholly-owned, indirect subsidiary of Light Tower Holdings LLC; a Delaware limited liability company ("Light Tower Holdings"), with the same principal offices location. According to Petitioners, Light Tower Holdings, through its various subsidiaries, is a full service provider of wireless infrastructure, fiber networks, and managed backhaul

¹ KCC is authorized to provide these services pursuant to Order of Approval dated September 14, 2004 in Docket No. TE04020089.

services throughout the United States. The company operates a communications network infrastructure consisting of approximately 350 communications towers, access to over two million distribution poles, and over 1,100 miles of dark fiber network in New England, with over 1,100 available route miles. Through its network, it provides tower (cell site backhaul) service to wireless communications service providers, as well as fiber backhaul in conjunction with its Distributed Antenna System Service to large commercial customers. Light Tower Holdings recently increased its above-described communications network and its presence in the State through the acquisition of DataNet Communications Group, Inc. ("DCG"), a Delaware corporation, and its wholly-owned subsidiary, New Jersey DataNet Telecom, LLC, a Delaware limited liability company and an authorized provider of intrastate telecommunications.²

KCC is a New York corporation, with a principal business address in Islandia, New York. KCC is an indirect subsidiary of National Grid plc, a public liability company incorporated under the laws of England and Wales.³ According to Petitioners, KCC provides high speed, point-to-point, private data transmission in accordance with the specifications of its customers. Petitioners state that KCC's operations in the State are limited in size and scope: none of KCC's employees are located in the State; it does not maintain an office in the State; it owns or leases approximately 30 miles of fiber optic cable in the State; it has seven customers in the State; and its total interstate and intrastate revenues derived from its operations in the State were approximately \$750,000 in 2007. Petitioners further state that all of KCC's customers in the State are commercial parties who receive service under individually negotiated contracts.

DISCUSSION

Petitioners seek approval of the acquisition of all of the membership interests of KCC, the terms of which are set forth in a Membership Interest Purchase Agreement, dated February 26, 2008 (the "MIPA"). Pursuant to the MIPA, KCC will reorganize itself from a New York corporation to a Delaware limited liability company and change its name to Light Tower Fiber Long Island LLC.⁴ After this reorganization and name change, Light Tower Fiber will acquire 100% of the outstanding membership interests of KCC (the name of which will then be Light Tower Fiber Long Island). After the acquisition, Light Tower Fiber Long Island will be a wholly-owned, direct subsidiary of Light Tower Fiber.

² The acquisition of New Jersey DataNet Telecom, LLC was approved by the Board by Order of Approval dated February 4, 2008 in Docket No. TM07120939. Light Tower also acquired in that subject transaction Hudson Valley DataNet LLC, and Connecticut DataNet LLC, each a Delaware limited liability company, which operate in New York and Connecticut, respectively.

³ In the United States, subsidiaries of National Grid plc transmit and/or distribute electricity and/or natural gas to approximately 6.7 million customers in Massachusetts, New Hampshire, New York and Rhode Island. National Grid USA, a wholly subsidiary of National Grid plc, is the parent company of National Grid's United States holdings.

⁴ KCC will also transfer to its current affiliate KeySpan Corporate Services, LLC ("KCS") a portion of its cable and associated accessories, along with corresponding pole attachment licenses ("retained cable"). The retained cable will be used to conduct the internal telecommunication functions of KCS and its affiliates solely within New York State. None of the retained cable is located in New Jersey.

To fund the acquisition, Light Tower Fiber will use a combination of existing cash balances and/or additional equity contributions through Light Tower Holdings, as well as a draw on a pre-existing, first lien credit agreement and second lien credit agreement ("Credit Facility") entered into by LT, LLC, a wholly owned subsidiary of Light Tower Holdings.⁵ Light Tower Fiber Long Island will become a party to and guarantor under the Credit Facility and will grant liens on substantially all of its assets to secure the obligations under the Credit Facility. Light Tower Fiber also will pledge its membership interest in Light Tower Fiber Long Island as additional security under the Credit Facility.

Petitioners state that the proposed acquisition requires the approvals of the City of New York, the Public Service Commission of the State of New York and the Federal Communications Commission.

Petitioners assert that the proposed acquisition will serve the public interest and benefit the telecommunications marketplace in New Jersey. The proposed assumption of control of Light Tower Fiber Long Island, the successor to KCC, will result in the integration of KCC's current fiber optic communications network into the above-described network of Light Tower Fiber and its affiliates, which will enable Light Tower Fiber Long Island to obtain additional financial and operational resources through combined, increased asset holdings and revenue streams post-acquisition. These additional resources will strengthen the competitive positions of Light Tower Fiber Long Island, as well as Light Tower Holdings' current operating subsidiaries, and will provide them with the ability to offer existing and prospective customers a greater range of telecommunications services and products and to take advantage of greater economies of scale. Petitioners assert that the proposed transaction will have no impact on KCC's existing rates and terms and conditions of service, will be transparent to KCC's seven current commercial customers in New Jersey, and will have no negative impact on employees as KCC currently has no employees located in New Jersey.

In support of Petitioners' request for a waiver of the notice requirements of N.J.A.C. 14:1.5-14(b)(12), they state that currently KCC has seven customers in New Jersey, all of whom are commercial entities receiving service under individually negotiated contracts, and all of whom received direct notice of this proposed transfer and have not indicated any objection or concern. Accordingly, Petitioners assert that the proposed transaction does not involve a transfer of mass market services and a waiver is appropriate under these specific facts and circumstances.

The Division of Rate Counsel has reviewed this matter and by letter dated April 22, 2008, has recommended that the Board approve the Petition. On May 28, 2008, Petitioners notified current customers of the proposed transfer. As of this date, no comment or objection has been received by any customer or any other party.

⁵ According to Petitioners, the Credit Facility is dated as of August 15, 2007, and involves various lenders and provides for a first lien revolving and term credit facilities of up to \$207,000,000, of which approximately \$161,000,000 was outstanding as of the date on which the Petition was filed, and a second lien term loan of \$43,000,000 all of which is currently outstanding. Petitioners state that, at the time of closing of the Credit Facility, neither Light Tower Holdings nor any of its subsidiaries held any beneficial ownership interest in any entity subject to the Board's jurisdiction.

FINDINGS AND CONCLUSIONS

The Board, after thorough review and investigation, and having considered the Petition and all related documents submitted in this proceeding, concludes that there will be no negative impact on rates, terms and conditions of service by Light Tower Fiber Long Island, the successor to KCC, and that this transfer will have no negative impact on customers and employees of Light Tower Fiber Long Island. Light Tower Fiber Long Island, as successor to KCC, will continue to offer the same services under the same rates, terms and conditions contained in KCC's filed tariff. Moreover, a positive benefit may be expected from Light Tower Fiber Long Island's access to additional resources, which would make Light Tower Fiber Long Island a more attractive provider, and allow Light Tower Fiber Long Island to better compete in the marketplace.

Accordingly, the Board FINDS that the proposed acquisition and related transactions that are addressed in the Petition and herein are in accordance with law and are in the public interest, and HEREBY ORDERS that the Petitioners are HEREBY AUTHORIZED to consummate such acquisition and related transactions. The Board further FINDS the requested waiver of the notice requirements of N.J.A.C. 14:1.5-14(b)(12) is reasonable under the specific facts and circumstances of this matter and HEREBY ORDERS that the requested waiver is GRANTED.

This Order is issued subject to the following conditions:

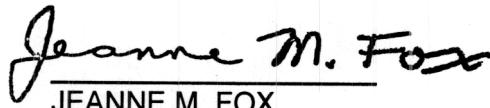
- Petitioners shall notify the Board of the closing of the proposed transaction within five (5) business days of the consummation of the transfer of control.
2. Petitioners shall notify the Board of any material default on the terms of the Credit Facility within five (5) business days of such occurrence.
3. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of any tangible or intangible asset now owned by KCC or hereafter to be owned by Light Tower Fiber Long Island, as successor to KCC.
4. Notwithstanding anything to the contrary in the Credit Facility, a default or assignment under such agreement does not constitute an automatic transfer of Light Tower Fiber Long Island's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. This Order shall not affect nor in any way limit the exercise of the authority of the Board, or of the State of New Jersey, in any future petition or any proceedings with respect to the rates, franchises, services, financing (including the method of sale of securities), accounting, capitalization, depreciation, or any other matter affecting Light Tower Fiber Long Island.


6. The approval of this proposed transaction shall expire on December 31, 2008, unless the proposed transaction has been consummated or unless an extension or modification has been ordered by this Board.

DATED:

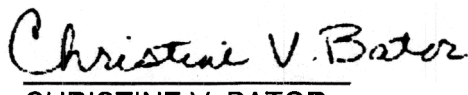
6/16/08

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

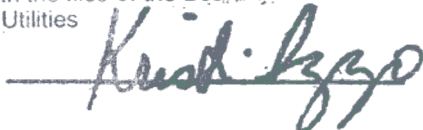

CHRISTINE V. BATOR
COMMISSIONER


NICHOLAS ASSELTA
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. TM08040212

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