



Agenda Date: 12/1/09  
Agenda Item: IVB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**TELECOMMUNICATIONS**

|  |   |                       |
|--|---|-----------------------|
| IN THE MATTER OF THE JOINT PETITION OF   | ) | ORDER                 |
| PAETEC COMMUNICATIONS, INC. AND          | ) |                       |
| US LEC OF PENNSYLVANIA INC. FOR APPROVAL | ) |                       |
| TO PARTICIPATE IN VARIOUS FINANCING      | ) |                       |
| TRANSACTIONS                             | ) | Docket No. TF09100817 |

James H. Laskey Esq., Norris McLaughlin & Marcus P.A. , for Joint Petitioners

Toni S. Lee, Esq. and Grace R. Chiu, Esq., Venable LLP, for Joint Petitioners

**BY THE BOARD:**

PAETEC Communications, Inc. ("PAETEC") and US LEC of Pennsylvania Inc. ("US LEC") (together, the "Petitioners," and each, a "Petitioner"), filed a petition with the Board on October 2, 2009, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9, for approval to participate in various debt financing arrangements.

PAETEC is a Delaware corporation and an indirect, wholly owned subsidiary of PAETEC Holding Corp. ("PAETEC Holding" or the "Company"). PAETEC is authorized to provide facilities-based local exchange and interexchange telecommunications services pursuant to the Board's Order of Approval dated February 6, 2003, in Docket No. TE02060319 and provides resold telecommunications services in New Jersey on a deregulated basis pursuant to an Authorized Resale Carrier Letter of Acknowledgement acknowledged by Bell-Atlantic-New Jersey, Inc. on July 22, 1998.

US LEC is a North Carolina corporation and, like PAETEC, an indirect, wholly-owned subsidiary of PAETEC Holding ("Company"). US LEC is authorized to provide local exchange and intrastate interexchange telecommunications services pursuant to the Board's Order of Approval issued in Docket No. TE99030180. US LEC's property in New Jersey consists of (1) a data switch, a remote access server and two routers located in Newark and (2) a Foundry Fiber switch, two routers, and customer channel banks located in Princeton.

PAETEC Holding is a publicly traded Delaware Corporation with headquarters located in Fairport, New York. PAETEC Holding is a competitive provider of personalized business communications for medium-sized and larger business, enterprise organizations and institutions across the United States. Through its operating subsidiaries, the Company offers a comprehensive suite of voice,



comprehensive suite of voice, data, and IP services, as well as enterprise communications management software, network security solutions, customer premises equipment, and managed services.

Petitioners are requesting Board approval to (1) encumber their respective New Jersey assets as security for up to \$700 million in long-term indebtedness of PAETEC Holding, which is in addition to the authorization already granted by the Board in Docket Nos. TM06080616 and TF07070544; (2) guarantee and assume the obligations of PAETEC Holding of up to \$700 million in long-term indebtedness, which would cover the execution and delivery of one or more guarantees, pledge and security agreements, and such other agreements as may be required.; and (3) authorization to participate in various financing arrangements related to any restructuring, refinancing and/or financing of any long-term indebtedness of PAETEC Holding covered by the authorization granted in sub-paragraphs (1) and (2) above, so long as the total long-term indebtedness at any one time outstanding complies with such conditions as the Board determines are necessary to include in its order approving this Petition.

The funds from the proposed financings will be used to refinance existing long-term debt obligations with lower cost debt instruments; to refinance existing long-term debt maturities; to finance new capital expenditures supporting both the expansion of its national footprint, including the acquisition of other telecommunications companies and/or telecommunications assets, and the enhancement of its communications service offerings; and to provide for working capital and other general corporate purposes. The proceeds of the proposed financings may also be used to pay fees and expenses incurred in connection with such arrangements.

Petitioners assert that Board approval of this petition will serve the public interest because the authorization requested will enable the Company to capture favorable market conditions in a timely and efficient manner, and thereby take advantage of opportunities to reduce its financing costs, obtain more attractive terms and conditions and relaxed covenant restrictions, better leverage its financial resources, and select the financing options most appropriate for the purpose of the debt. Petitioners add that the flexibility afforded by the authorization requested will enable the Company to strengthen its financial condition and, in turn, create opportunities to enhance the respective competitive position of its New Jersey operating subsidiaries, including Petitioners, in the New Jersey telecommunications marketplace, all of which ultimately will inure to the benefit of their respective New Jersey customers.

The funding providers may be banks, financial institutions, private lending institutions, private individuals, and/or other institutions, either individually or a consortium. The funding group may change over the life of the financing.

Portions of the financed funds will be in the form of conventional credit facilities, such as revolving credits; letters of credit; secured or unsecured notes or debentures (including notes convertible into common stock) issued to banks, other types of financial institutions or other investors; and term loans.

The interest rate will be the market rate for similar financings and will be determined when the financing is finalized. As is typical in such transactions, the interest rate will have two components: a base rate and a margin rate. The base rate would be defined as the base or prime rate charged by a specified major bank for loans of similar size with similar maturities or as an adjusted federal funds rate. Eurodollar loans would be specified on a specified London Interbank Rate (LIBOR).



Some and perhaps all of the loans to PAETEC Holding are expected to be secured by a security interest in substantially all of Petitioners' respective assets. The stock of each Petitioner may also be pledged as additional security. Additionally, it is expected that each Petitioner will provide guarantees or may be a borrower or co-borrower. The security documents will contain appropriate provisions indicating that exercise of certain rights may be subject to obtaining prior regulatory approval.

By capturing favorable debt market conditions and restructuring its debt, Petitioners state that PAETEC will improve its capital structure and enhanced its market position. These benefits indirectly benefit Petitioners and, ultimately, will benefit their respective customers in New Jersey. Petitioners anticipate that their participation in the debt financing arrangements described herein will ultimately strengthen the ability of PAETEC and US LEC to enhance their service offerings, and provide more advanced telecommunications services to a broader customer base to the benefit of New Jersey consumers and the State's telecommunications marketplace.

Petitioners' participation in the financing arrangements described herein will not involve a transfer of authorizations, assets or customers of either Petitioner. Petitioners' participation will be transparent to their respective customers in New Jersey. Petitioners will continue to provide services to their respective New Jersey customers with no changes in the rates or terms and conditions of service as currently provided.

In a letter dated November 17, 2009, the Division of Rate Counsel ("Rate Counsel") recommended that the Board approve the Petition subject to the requirement that any financing entered into during the term of the approval not exceeding the approved debt level be reported to the Board and Rate Counsel upon completion of the transaction.

After review, the Board FINDS that the proposed transaction is consistent with the applicable law and the Board HEREBY AUTHORIZES Petitioners to participate in the financing arrangements described herein.

This Order is issued subject to the following provisions:


1. 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.
2. Petitioners shall semi-annually file statements for the amounts, use of the amounts and use of the credit facilities pursuant to N.J.S.A. 48:3-9 and N.J.A.C. 14:1-5.9. Furthermore, Petitioners shall report to the Board and Rate Counsel any financing transactions entered into pursuant to the approval contained in this Order upon completion of the transaction.
3. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioners.



4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement shall not constitute automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. The terms and conditions of any new term loans and or notes shall be substantially similar to, if not more favorable than, those of the existing term loans under the Amended Credit Facilities and the Senior Notes or Senior Secured Notes, respectively.
6. The interest rates for any new term loans or notes shall be no greater than six percent (6%) higher than the current interest rates applicable to the Amended Credit Facilities and the Senior Notes or Senior Secured Notes, respectively.
7. Board approval must be sought by Petitioners for any guarantees or security of any term loans or additional notes that cannot be issued pursuant to the foregoing conditions.
8. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised on or before December 31, 2014.

DATED: 12/1/09

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT


  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

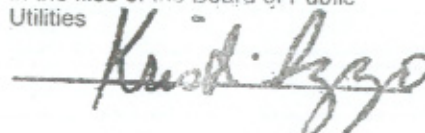
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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



**In the Matter of the Petition of the Verified Petition of PAETEC Communications, Inc.  
and US LEC of Pennsylvania, LLC For Approval to Participate in Various Financing  
Transactions**

**DOCKET NO. TF09100817**

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