



Agenda Date: 10/20/10
Agenda Item: IVB

STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center, Suite 801
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION
OF BIRCH COMMUNICATIONS, INC., CLOSECALL)
AMERICA, INC., AND AMERICAN FIBER NETWORK,)
INC. FOR APPROVAL TO TRANSFER ASSETS AND)
CUSTOMERS OF CLOSECALL AMERICA, INC. AND)
AMERICAN FIBER NETWORK, INC. TO BIRCH)
COMMUNICATIONS, INC.)

ORDER OF APPROVAL

DOCKET NO. TM10090676

(SERVICE LIST ATTACHED)

Cahill Gordon & Reindel LLP Washington DC for Birch Communications, Inc.
Douglas C. Bethell for CloseCall America, Inc./American Fiber Network, Inc.

BY THE BOARD:

On September 10, 2010, Birch Communications, Inc. ("Birch"), CloseCall America, Inc. ("CloseCall"), and American Fiber Network ("AFN") (jointly, "Petitioners"), filed a verified petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:3-7, for approval or such authority as may be necessary to consummate a Transaction among Birch, CloseCall, and AFN through which Birch will acquire the assets and customers of CloseCall and AFN ("Sellers"). Subsequently on September 17, 2010, Petitioners filed an amended petition at Staff's request. Upon consummation of the proposed transaction, Birch will file any necessary tariff revisions to incorporate Sellers' current services and rates so that CloseCall and AFN customers will continue to receive services under the same terms, rates and conditions that they currently receive without any changes.

BACKGROUND

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. In New Jersey, Birch was authorized to provide local exchange and Interexchange services on July 1, 2009. See I/M/O the Verified Petition of Birch Communications, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE09040307, Order dated July 1, 2009. Petitioners state that on September 3, 2010, Birch agreed to purchase the assets and customer base of Sellers through a Sale Agreement pursuant to Article 9 of the Uniform Commercial Code.

CloseCall American, Inc. is a Delaware corporation with offices located at 101A Log Canoe Circle, Stevensville, MD 21666. CloseCall is authorized by the Board to provide local exchange and Interexchange services in New Jersey. CloseCall received its authority in New Jersey on May 12, 2004. See, I/M/O the Verified Petition of CloseCall America, Inc. for Authority to Provide Local Exchange and Interexchange Services in New Jersey, Docket No. TE04030202, Order dated May 12, 2004. CloseCall has one employee in New Jersey. CloseCall has approximately 135 business lines and 2249 residential lines in New Jersey.

American Fiber Network, Inc. is a Delaware corporation with headquarters located at 9401 Indian Creek Parkway, Suite 280 Overland Park, Kansas, 66210. AFN is a reseller and provides service via a resale agreement with Verizon. AFN has no employees in New Jersey and has 2 business and 94 residential lines in the state.

DISCUSSION

According to the petition, pursuant to a Sale Agreement dated September 3, 2010, Birch Communications, Inc., as purchaser, and CloseCall America, Inc. and American Fiber Network, Inc., as sellers, intends to purchase substantially all of the telecommunications assets and New Jersey customer base of Sellers. As noted above, the customers are certain local and long distance resale and UNE-P customers. Birch Communications will acquire approximately 135 subscriber lines from American Fiber Network and 2249 subscriber lines from CloseCall America. After consummation of the transaction, Birch will provide CloseCall and AFN customers with the same service quality as before and handle all billing.

Petitioners have also complied with Mass Migration guidelines at 14:10-12, and will provide customers a 60 day and a 30 day notification. This notice would inform customers of the transfer and also that they have the right to choose another carrier. Petitioners have requested a modification of mass migration guidelines at 14:10-12.7(a) to provide Staff with a list of end users at least 60 days prior to departure. Staff has determined that a modification of this requirement be granted since there are no priority end users involved in this migration.

According to the petition, following consummation of the transaction, Birch will continue to offer quality services to New Jersey residents as is supported by its industry knowledge technical expertise and financial strength. Birch will also file any necessary tariff revisions to incorporate Sellers' current services and rates so that affected customers will continue to receive the same services that they currently receive without any changes to the service offerings, rates or terms and conditions. Birch will provide services to CloseCall and AFN customers utilizing its existing interconnection agreements, 911 arrangements and numbering arrangements.

As a result, the proposed transaction will be transparent to customers and will not have a negative impact on the public interest, services to New Jersey customers, or competition.

By letter dated October 8, 2010, Division of Rate Counsel filed comments, stating that it recommends that the Board approve the petition.

FINDINGS AND CONCLUSION

Under N.J.S.A. 48:3-7, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to any of its employees. However, those obligations do not apply here.

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. The Board also concludes that a modification of mass migration 14:10-12.7(a) as proposed by petitioner is in the best interest of the parties.

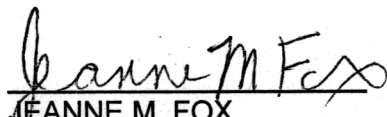
Accordingly, after careful review of this matter, the Board FINDS that the transaction will have no negative impact on competition, employees, or the rates to customers. The Board also FINDS that the asset and customer transfer will have no negative impact on the provision of safe, adequate and proper service and will positively benefit competition. Furthermore, the Board FINDS that the transfer will likely have a net positive benefit to the customers in the state.

Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, FINDS that the asset and customer transfer is in accordance with the law and in the public interest. The Board HEREBY APPROVES the request by Petitioner for this transaction. Finally, the Board FURTHER ORDERS that the approval in this Order shall become null and void and of no effect to the extent that the approved Transaction has not been effected prior to May 31, 2011. 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.

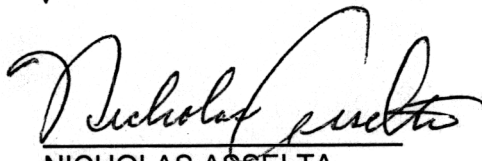
DATED: 10/20/10

BOARD OF PUBLIC UTILITIES
BY:


LEE A. SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

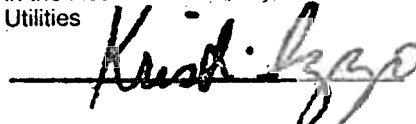

NICHOLAS ASSELTA
COMMISSIONER


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



SERVICE LIST

Docket No. TM10090676

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