



Agenda Date: 11/10/10  
Agenda Item: IVD

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center – Suite 801**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**TELECOMMUNICATIONS**

IN THE MATTER OF THE VERIFIED JOINT PETITION )  
OF PAETEC HOLDING CORP. AND TALK AMERICA, )  
INC., CAVALIER TELEPHONE MID-ATLANTIC, LLC, )  
AND INTELLIFIBER NETWORKS, LLC FOR APPROVAL )  
(1) FOR THE TRANSFER OF INDIRECT CONTROL OF )  
TALK AMERICA, INC., CAVALIER TELEPHONE )  
MID-ATLANTIC, LLC AND INTELLIFIBER NETWORKS, )  
LLC TO PAETEC HOLDING CORP. AND (2) FOR THE )  
CAVALIER ENTITIES TO PARTICIPATE IN EXISTING )  
AND NEW FINANCING ARRANGEMENTS OF )  
PAETEC HOLDING CORP. )

ORDER OF APPROVAL

Docket No. TM10090678

James H. Laskey, Esq., Norris McLaughlin & Marcus, PA, Bridgewater, New Jersey, for the  
Petitioners

BY THE BOARD:

On September 14, 2010 PAETEC Holding Corp. (PAETEC), Talk America, Inc. ("TA"), Cavalier Telephone Mid-Atlantic, LLC ("CavTel-MA") and Intellifiber Networks, LLC ("Intellifiber") (TA, CavTel-MA and Intellifiber collectively, the "Cavalier Entities") ( PAETEC and the Cavalier Entities collectively, the "Petitioners") submitted a verified Petition to 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 N.J.S.A. 48:3-10, requesting approval for the transfer of indirect control of the Cavalier Entities to PAETEC ("Transfer") and upon closing of the Transfer, for the Cavalier Entities to participate in existing and new financing arrangements of PAETEC. Following the Transfer, the Cavalier Entities will continue to offer services at the same terms, rates and conditions under which they currently offer such services in the State.

**BACKGROUND**

PAETEC is a publicly traded Delaware corporation with offices located in Fairport, New York. PAETEC, through its operating subsidiaries, provides services to business customers in 46 states and the District of Columbia. PAETEC has two facilities-based subsidiaries that operate in New Jersey: Paetec Communications Inc. ("PCI") and US LEC of Pennsylvania LLC d/b/a PAETEC Business Services ("PAETEC-PA"). See I/M/O the Petition For an Order Authorizing

PAETEC Communications, Inc. to Provide Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE02060319, Order dated February 5, 2003 and I/M/O the Petition of US LEC Pennsylvania Inc. for Authorization to Provide Resold and Facilities Based, Local Exchange and Interexchange Telecommunication Services Throughout New Jersey, Docket No. TE99030180, Order dated August 18, 1999, respectively.

The Cavalier Entities are wholly owned indirect subsidiaries of Cavalier Telephone Corporation ("Cavalier"), a Delaware corporation. Cavalier and the Cavalier Entities have their principal business offices in Richmond, Virginia. According to the petition, through its various operating subsidiaries, including the Cavalier Entities, Cavalier uses its own network, including a high-capacity fiber network, to serve customers throughout the Midwest, Southeast, Mid-Atlantic and Northeast. Its customers are business, residential and government. In New Jersey TA is authorized to provide facilities based local exchange services. See In the Matter of the Petition for an Order Authorizing Talk.com Holding Corp., d/b/a The Phone Company to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE00100767, Order dated January 10, 2002. CavTel-MA is authorized to provide facilities based intrastate telecommunications service, See I/M/O the Petition for An Order Authorizing Cavalier Telephone Mid-Atlantic, LLC to Provide Local Exchange Telecommunications Services throughout New Jersey, Docket No. TE01060370, Order dated September 27, 2001. Also, Intellifiber (f/k/a Elantic) operates in New Jersey pursuant to Board authority originally granted to Dominion Telecom, Inc. on October 6, 2002. See I/M/O the Petition for an Order Authorizing Dominion Telecom, Inc. to Provide Local Exchange Telecommunications Services Throughout New Jersey, Docket No. TE01090594, Order dated October 31, 2002, which was later transferred to Elantic on May 12, 2004, See I/M/O the Joint Petition of Dominion Telecom, Inc., Dominion Fiber Ventures, LLC and Elantic Networks, Inc. for Approval of a Change of Control, Docket No. TM0403019, Order dated May 12, 2004. In New Jersey, the Cavalier Entities currently have one employee.

## **DISCUSSION**

Pursuant to an Agreement and Plan of Merger, dated as of September 12, 2010, by and among PAETEC, Cairo Acquisition Corp. ("MergerCo") (an indirect wholly-owned subsidiary of PAETEC created for the purposes of the transaction), Cavalier, and the Stockholder Representative (the "Agreement"), MergerCo will merge with and into Cavalier, with Cavalier continuing as the surviving entity (the "Merger"). As a result of the Merger, the Cavalier Entities will become wholly owned indirect subsidiaries of PAETEC and PAETEC Corp. Thus PAETEC will become the new ultimate parent company of Cavalier and the Cavalier Entities. Petitioners state that there will be no change in rates terms and conditions and therefore the transaction will be seamless and transparent to customers. Petitioners also state that there are no plans at this time concerning any possible change to the number of employees in New Jersey as a result of the Merger.

On October 20, 2010, in I/M/O the Petition of PAETEC Communications Inc. and US LEC of Pennsylvania LLC d/b/a PAETEC Business Services for Approval to Participate in Various Financing Transactions, Docket No. TF10080629, Order dated October 20, 2010, the Board approved certain financing arrangements for PAETEC and PAETEC-PA. Among the uses of the funds in that matter was the acquisition of the Cavalier Entities. In that Order it was noted that Cavalier would participate in the financings being approved. As a part of this merger transaction, Petitioners are requesting Board approval, pursuant to N.J.S.A. 48:3-7 and 48:3-9, for the Cavalier Entities to participate, upon closing of the Cavalier Transfer, in the existing

financings by providing a guarantee and pledging their assets as security for the existing financings. Proceeds from the Credit Facility will be used to finance the Cavalier Transfer and other potential targeted acquisitions.

In evaluating this petition, 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; N.J.A.C. 14:1-5.14(c). Also, 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. In addition, under N.J.S.A. 48:3-9, the Board must be satisfied that the proposed issue of stocks is to be made in accordance with law and the purpose thereof is approved by the Board. Finally, regarding N.J.S.A. 48:3-10, the Board must be satisfied that there are no adverse impacts on obligations to employees.

### **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 the Cavalier Entities and will have no negative impact on customers and employees of the Cavalier Entities. The Cavalier Entities will continue to offer the same services under the same rates, terms and conditions as indicated in their filed tariffs. Moreover, a positive benefit may be expected from the Cavalier Entities access to additional resources, which would make the Cavalier Entities more attractive providers, and allow the Cavalier Entities to better compete in the marketplace.

Accordingly, the Board FINDS that the proposed transfer and related loan transaction are in accordance with law and are in the public interest, and HEREBY ORDERS that the Petitioners are HEREBY AUTHORIZED to consummate the merger transaction and participate in the financing arrangements as described herein.

The Staff's review indicates that the requested approval for Cavalier Entities to participate in existing financings of PAETEC to be reasonable and appropriate. While there is no guarantee in this regard, especially given the competitive environment in which Petitioner operates, the Board is satisfied that the transactions will not have an adverse impact on Petitioner's operations in New Jersey.

After review, the Board FINDS that the proposed transaction is consistent with the applicable law and the public interest. The Board, therefore, approves the purposes thereof.

The Board HEREBY AUTHORIZES the Petitioners to provide their guarantee, serve as co-borrowers, or otherwise provide security in connection with financing.

This Order is 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 of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
- 2 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 does not constitute an automatic transfer of Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.


3. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by Petitioners.
4. Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangements and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.


DATED: 11/10/10

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

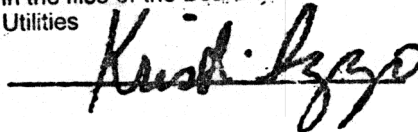
  
NICHOLAS ASSELTA  
COMMISSIONER

  
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



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