



Agenda Date: 1/21/15
Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED AMENDED)	ORDER OF APPROVAL
PETITION OF CAVALIER TELEPHONE MID-)	
ATLANTIC, LLC, INTELLIFIBER NETWORKS INC.,)	
PAETEC COMMUNICATIONS, INC., TALK)	
AMERICA, INC., AND US LEC OF)	
PENNSYLVANIA, INC. FOR THE TRANSFER AND)	
MASS MIGRATION OF CERTAIN INTRASTATE)	
TELECOMMUNICATIONS SERVICE)	
CUSTOMERS IN THE STATE OF NEW JERSEY)	
TO TALK AMERICA SERVICES, LLC AND FOR)	
THE CONTEMPORANEOUS CHANGE OF)	
CONTROL OF TALK AMERICA SERVICES, LLC)	DOCKET NO. TO14091079

Parties of Record:

James H. Laskey, Esq., Norris McLaughlin & Marcus, PA, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Cesar Caballero, V.P., for Windstream Communications

BY THE BOARD:

On September 29, 2014, Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks Inc., PaeTec Communications, Inc., Talk America, Inc. and US LEC of Pennsylvania, Inc. ("collectively Windstream Licensees or Petitioners") filed a petition with the New Jersey Board of Public Utilities ("Board") for the Mass Migration of Certain Intrastate Telecommunications Service Customers in the State of New Jersey to Talk America Services, LLC. Windstream Licensees requested that the Board issue an Order approving the transfer of the residential local and long distance customers of Petitioners to Talk America Services, LLC (TAS). TAS is a newly formed company that received Board approval to operate as a facilities - based competitive local exchange and interexchange carrier on December 17, 2014 in Docket No. TE14111290.

Windstream Holdings is a Delaware corporation headquartered at 4001 Rodney Parham Road, Little Rock, Arkansas 72212 and is a publicly traded S&P 500 diversified communications and entertainment company. Windstream Licensees provide local and long distance telephone services, data hosting services, broadband and high-speed data services and video services to customers throughout the United States. All five of Windstream Licensees have received local and/or interexchange services pursuant to Board authority in the past. There are approximately 365 residential customers that would be migrated to Talk America Services, LLC and there will be no adverse impact on any New Jersey employees.

DISCUSSION

As described in the petition, Windstream Licensing is planning an intra-corporate transaction in which its business will be divided into two independent units: an operating unit that will continue to provide telecommunications services and a real estate investment trust (REIT) that will hold title to certain assets, none of which are located in New Jersey. Under the transaction, the assets including copper, fiber, real estate, and other network assets, will be transferred to Communications Sales and Leasing (CSL), a newly established corporation, and CSL will lease them back to Windstream on a long-term basis. CSL will operate as a REIT, and CSL and Windstream will thereafter be independently publicly traded companies. As no New Jersey assets are being assigned, Petitioners are requesting approval of the assignment of the residential customers to TAS. After the Board approves the transfer, and following notice to affected customers, the Windstream Licensees will retain all of their business customers and their existing authorizations. Upon the transfer, Talk America Services LLC will provide the same service at the same rates, terms, and conditions and will adopt the tariffs of the current Windstream Licensees. Petitioners have also requested waivers of several sections of the Board's Mass Migration Rules because they claim that they would be unduly burdensome, unnecessary, and confusing to customers of the Windstream Licensees. However, Petitioners will provide ample notification of the transfer to those affected customers.

By way of letter dated October 31, 2014, the New Jersey Division of Rate Counsel (Rate Counsel) stated that the subject transfer is premature since the transfer is just one part of a multipart transaction. Rate Counsel argued that Petitioners should seek approval from the Board for a transfer of control, and a sale of assets pursuant to N.J.S.A. 48:2-51 and 48:3-7. According to Rate Counsel, Talk America Services should seek Board approval to operate in New Jersey as a facilities-based competitive local exchange and interexchange carrier.

On November 10, 2014, Petitioners filed a letter in lieu of a formal amendment to the original petition agreeing to amend its original petition. In its letter, Petitioners agreed to seek Board approval for the transfer of customers to Talk America Services LLC as a transfer of assets under N.J.S.A. 48:3-7. Talk America Services LLC also agreed to petition the Board for approval to operate as a facilities-based competitive local exchange and interexchange carrier. Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated November 10, 2014, Talk America Services, LLC filed a verified petition with the Board requesting authority to provide facilities-based local exchange and interexchange telecommunications services to residential customers throughout the State of New Jersey, and the Board so authorized TAS. See In the Matter of the Petition of Talk America Services, LLC for Authorization to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE14111290, Order dated December 17, 2014.

In the November 10, 2014 letter, Petitioners stated that assuming Talk America Services LLC received Board approval as a CLEC, Talk America Services LLC would also experience a change of control when its parent, CSL, is spun off from Petitioners' parent, Windstream Holdings, Inc. Accordingly, Petitioners advised that the original petition was being amended to also seek Board approval for a change in control pursuant to N.J.S.A. 48:2-51.1. The letter also explains that no network-related or physical assets are being transferred, only New Jersey residential customers. Those customers will continue to receive the same service as previously provided subject to the same rules, regulations and applicable tariffs. Petitioners also state that the transfer of control will occur after TAS obtains its authority to operate in New Jersey. On November 21, 2014, Petitioners filed a letter requesting that the caption of their petition be amended to fully capture the relief sought, including the contemporaneous change of control of Talk America Services, LLC.

By way of letter dated December 8, 2014, Rate Counsel submitted its second comments stating that the sale of assets and transfer of control should be approved under N.J.S.A. 48:2-51 and 48:3-7. In addition, Rate Counsel stated that the Mass Migration of customers should also be approved with the requested waivers.

FINDINGS AND CONCLUSIONS

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 and N.J.A.C. 14:1-5.14(c). Also, under N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligations to any of its employees. After a thorough review of the Petition, the Board concludes that there will be no negative impact on rates or service quality since Talk America Services, LLC's New Jersey customers will continue to receive the same services at the same rates, through the same assets, provided by the same employees, and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen Petitioners' competitive posture in the telecommunications market due to their access to additional resources. In addition, the Board is persuaded that Petitioners will make every effort to minimize any potential adverse impact to employees in New Jersey.

Accordingly, the Board **FINDS** that the proposed transactions will have no material impact on the rates of current customers or on employees. The Board also **FINDS** that the transactions will have no negative impact on the provision of safe, adequate, and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record submitted in this proceeding, the Board **FINDS** that the proposed transaction is in accordance with the law and in the public interest.

The Board also **FINDS** that, in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-52, following the closing, Windstream Licensees are still responsible for the filing of their annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to the Division of Rate Counsel. Talk America Services, LLC shall also submit tariff filings to incorporate or adopt the services and rates of the consolidating entities to the extent that such services and rates are different from those currently in the tariffs of the Windstream Licensees.

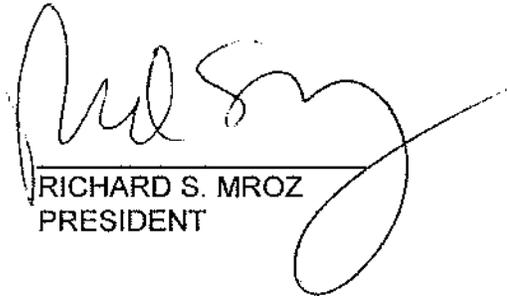
As for the request for the waiver regarding the Board's mass migration regulations, the Board **FINDS** that invoking those rules is not necessary in this instance and the request for waiver is **HEARBY GRANTED**.

The Board **HEREBY APPROVES** the request by Petitioners for the transactions.

This Order shall be effective on February 2, 2015.

DATED: 2/2/15

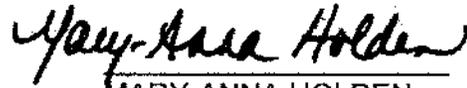
BOARD OF PUBLIC UTILITIES
BY:



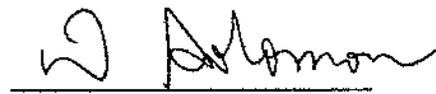
RICHARD S. MROZ
PRESIDENT



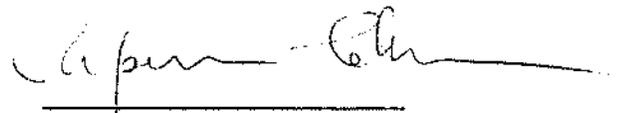
JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER



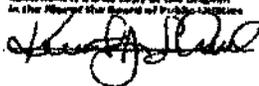
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



KENNETH J. SHEEHAN
SECRETARY

I HEREBY CERTIFY that the within documents is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE VERIFIED AMENDED PETITION OF CAVALIER
TELEPHONE MID-ATLANTIC, LLC, INTELLIFIBER NETWORKS INC., PAETEC
COMMUNICATIONS, INC., TALK AMERICA, INC., AND US LEC OF PENNSYLVANIA,
INC. FOR THE TRANSFER AND MASS MIGRATION OF CERTAIN INTRASTATE
TELECOMMUNICATIONS SERVICE CUSTOMERS IN THE STATE OF NEW JERSEY
TO TALK AMERICA SERVICES, LLC AND FOR THE CONTEMPORANEOUS
CHANGE OF CONTROL OF TALK AMERICA
SERVICES, LLC

BPU DOCKET NO. TO14091079

SERVICE LIST

James H. Laskey, Esq.
Norris McLaughlin & Marcus, PA
721 Route 202-206, Suite 200
Bridgewater, NJ 08807
jlasky@nmmlaw.com

Cesar Caballero
Windstream Communications
4001 Rodney Parham Road
Mailstop: 1170-B1F03-53A
Little Rock, AR 72212
Cesar.caballero@windstream.com

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003
sbrand@rpa.state.nj.us

Alex Moreau
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, NJ 07101-45029
alex.moreau@dol.lps.state.nj.us

Carol Artale, Esq.
Legal Specialist
Board of Public Utilities
44 South Clinton Street, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
carol.artale@bpu.state.nj.us

Alan Chris Molner
Board of Public Utilities
Division of Telecommunications
44 South Clinton Street, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
alan.molner@bpu.state.nj.us