Agenda Date: 6/17/15
Agenda Item: IVB

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 PETITION OF CROWN CASTLE NG EAST LLC FOR APPROVAL OF (1) A PRO FORMA CHANGE IN INDIRECT OWNERSHIP, AND (2) ITS PARTICIPATION IN CERTAIN FINANCING ARRANGEMENTS	)))))	ORDER DOCKET NO. TM15030356

Parties of Record:

James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On March 16, 2015, Crown Castle NG East LLC ("CCNG-East" or "Petitioner"), pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 and the regulations of the New Jersey Board of Public Utilities ("Board"), filed a verified petition ("Verified Petition" or "Petition") requesting approval, as within time, of a pro forma change in indirect ownership of Petitioner that occurred in connection with the conversion of the Petitioner's ultimate, publicly held parent company ("Holdco") into a publicly held real estate investment trust ("REIT"). Although the pro forma change resulted in a change to the ultimate parent of Petitioner, the pro forma change did not result in a change to the direct parent of Petitioner or to the ultimate owners of Petitioner (i.e., the shareholders of Holdco). CCNG-East continues to operate in New Jersey and continues to provide services to its existing customers pursuant to the existing rates, terms, and conditions. With this Petition, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-9, Petitioner is also requesting approval to participate in certain financing arrangements.

BACKGROUND

CCNG-East is a Delaware limited liability company and an indirect-wholly owned subsidiary of Crown Castle Solutions Corp. ("Solutions"), a Delaware corporation. Solutions is a direct wholly-owned subsidiary of Crown Castle Operating Company ("CCOC"), a Delaware corporation and a direct wholly-owned subsidiary of Crown Castle International Corp. (f/k/a Crown Castle REIT Inc. and the surviving entity of the REIT Transaction as described below) ("RIET-Parent" and collectively with its subsidiaries, "Crown Castle"). The Petition states that

REIT-Parent is currently a publicly traded Delaware corporation that does not have any 10% or greater owners. REIT-Parent, through certain of its subsidiaries, owns, operates, leases and manages over 39,600 towers and rooftop sites for wireless communications throughout the United States. Solutions and its subsidiaries, including CCNG-East, design, build, own, operate, and manage Distributed Antenna System ("DAS") networks. A DAS is a network of antennas and repeaters connected by fiber to a communications hub designed to facilitate wireless communications services for multiple operators. The Petition states that CCNG-East has approximately 14,000 DAS nodes supported by approximately 7,000 miles of fiber. In New Jersey, CCNG-East (f/k/a NextG Networks of NY, Inc. d/b/a NextG Networks East) has been authorized to provide local exchange and interexchange telecommunications services. See Order, I/M/O the Verified Petition of NextG Networks of NY, Inc. d/b/a NextG Networks East for Authority to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Docket No. TE04111434, dated February 1, 2005. CCNG-East is also authorized to provide intrastate telecommunications services in Alabama, Connecticut, Delaware, Florida, Georgia, Indiana, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Pennsylvannia, Rhode Island, and South Carolina.

DISCUSSION

According to the Petition, a pro forma change to the ultimate parent of Petitioner occurred in connection with the conversion of Holdco into REIT. The Petition states that in order to facilitate compliance with the rules governing real estate investment trusts by ensuring the effective adoption of certain charter provisions that implement ownership limitations and transfer restrictions related to its capital stock, (1) REIT-Parent was formed as a direct wholly-owned subsidiary of Petitioner's prior ultimate parent company that was also named Crown Castle International Corp. ("Predecessor-CCIC"), and then (2) REIT-Parent merged with and into Predecessor-CCIC, whereupon the separate existence of Predecessor-CCIC ceased and REIT-Parent was the surviving entity ("REIT Transaction"). The name of REIT-Parent was then changed to "Crown Castle International Corp." Petitioner avers that the ultimate owners of Petitioner (i.e., the shareholders of Holdco) did not change since the shareholders of Predecessor-CCIC automatically converted to shareholders of REIT-Parent in the REIT Transaction. Further, the direct parent company of Petitioner did not change.

Petitioner also seeks Board approval of its participation in existing financing arrangements and approval to participate in amended or future financing arrangements in an aggregate amount of up to $6.25 billion in order to maintain adequate flexibility to respond to market conditions and requirements and to respond to new acquisition and other business opportunities.

Petitioner has provided a guaranty for certain existing financing arrangements of its indirect parent, CCOC, in a committed aggregate amount of approximately $5.711 billion (the "Existing Facilities") of which approximately $4.176 billion is outstanding. The Existing Facilities consist of term loans and a revolving credit facility, maturing between seven and nine years after issuance or amendment and have interest rates of LIBOR plus a margin of 1.5-2.25% depending on the facility.

The future financing arrangements may include one or more of the following forms of debt instruments: notes or debentures (including notes convertible into equity and private notes that may be exchanged for public notes); conventional credit facilities, such as revolving credit facilities and term loans; letters of credit; bridge loans; or a combination thereof.

The term of the new debt may be up to ten (10) years after issuance or amendment depending on the type of facility. Interest rates will be the market rate for similar debt instruments and will not be determined until the financing arrangement(s) are finalized. Petitioner may be required to pledge its assets as security for some or all of the amended or future financing arrangements, and therefore seeks authorization, to the extent necessary, to provide a security interest in its assets for the full Aggregate Amount of the financing arrangements. For the secured facilities, the equity of Petitioner and certain affiliates and subsidiaries may also be pledged as additional security.

Petitioner seeks approval to participate as a guarantor or co-guarantor in financing arrangements up to the aggregate amount. The financing arrangements may be used for acquisitions, refinancing existing debt, working capital requirements and general corporate purposes of the company.

Accordingly, Petitioner requests Board authorization, to the extent necessary, to participate as a borrower or guarantor and by pledging its assets as security for financing arrangements in an aggregate amount of up to $6.25 billion.

The Petitioner states that the REIT Transaction was completed on December 15, 2014, and Petitioner has provided a guaranty for the Existing Facilities, of which approximately $4.176 billion is currently outstanding. Petitioner therefore is requesting that approval be granted on an "as within time" basis.

Petitioner states that it regrets that it was compelled to close before Board approval, and admits that due to an inadvertent oversight, Petitioner was not aware that pro forma changes in distant indirect ownership and participation in certain ordinary course financing arrangements by certificated entities require prior Board approval. Petitioner states that it regrets that it did not obtain prior approval before completing the transactions and further states that it has since established comprehensive internal procedures and company policies to ensure that similar oversights do not occur in the future.

Pursuant to N.J.S.A. 48:2-51.1(a), "the [B]oard shall evaluate the impact of [an] acquisition [of control of a public utility] on competition, on the rates of ratepayers affected by the acquisition of control, on the employees of the affected public utility or utilities, and on the provision of safe and adequate utility service at just and reasonable rates." 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" set forth above. 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 pension obligations to any of its employees.

Petitioner states that the REIT Transaction is in the public interest. Petitioner also submits that the REIT Transaction will enable Crown Castle to enjoy greater financial efficiencies and lower costs thereby allowing Crown Castle to invest further in telecommunications infrastructure and network improvements and upgrades. Further, Petitioner states that the REIT Transaction was entirely transparent to Petitioner's customers and did not result in any change in rates, terms or conditions of service.

Petitioner further asserts that there was no adverse impact to its New Jersey employees as a result of the REIT Transaction and that it does not have an employee pension plan, but that employees' rights in any other retirement benefit plan will be retained upon completion of the financing arrangements.

By letter dated April 22, 2014, the Division of Rate Counsel ("Rate Counsel") advised that it "does not oppose the Board's grant of Petitioners' requests contained in the Verified Petition and approval of the transactions as within time under the Petition." Letter from Rate Counsel at 3.

FINDINGS AND CONCLUSIONS

The Board notes that Petitioners closed upon the REIT Transaction without Board approval. Failure to first secure Board approval of a transaction as required by law is always problematic and should never be encouraged. It would be well within the Board's authority to sanction Petitioners or take other steps for Petitioners' failure to seek approval before closing on the REIT Transaction. Nevertheless, all things considered, and because of Petitioners' verified assertion that it has established internal procedures and policies to ensure that similar oversights do not occur in the future, the Board will consider the request on its merits for approval as within time.

After a thorough review of the Petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since Petitioner's New Jersey customers will continue to receive the same services at the same rates 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 Petitioner as the REIT Transaction and financing arrangements will strengthen Crown Castle's competitive posture in the telecommunications market due to its access to additional resources. The Board **FINDS** that the REIT Transaction and financing arrangements will have no material impact on the rates of current customers or on employees. The Board also **FINDS**, for the reasons set forth by Petitioner that the REIT Transaction and financing arrangements will have no negative impact on the provision of safe, adequate and proper service, but they will positively benefit competition. The Board therefore concludes that the REIT Transaction and financing arrangements described herein are in accordance with the public interest and **HEREBY APPROVES** Petitioner's requests to participate in the REIT Transaction and financing arrangements as within time.

Additionally, having considered the record in this proceeding, the Board **FINDS** that the amended or future financing arrangements described herein are in accordance with law and in the public interest and **HEREBY AUTHORIZES** Petitioner to participate in the amended or future financing arrangements described herein.

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 the State of New Jersey in any future petition or in any proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting Petitioner.

2. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents ("Agreement"), 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. when 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 Petitioner.

4. Petitioner shall notify the Board, within five business days, of any material changes in the proposed financing, and shall provide complete details of such transactions including any anticipated effects upon service in New Jersey.

5. Petitioner shall notify the Board of any material default in the terms of the proposed financing within five business days of such occurrence.

This order shall become effective on June 26, 2015.

DATED: June 18, 2015

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:

IRENE KIM ASBURY
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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