



Agenda Date: 10/15/15
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 JOINT PETITION) ORDER
OF ODYSSEY ACQUISITION, LLC AND EXTENET)
SYSTEMS, INC. FOR APPROVAL (1) OF THE)
TRANSFER OF INDIRECT CONTROL OF EXTENET)
SYSTEMS, INC. TO ODYSSEY ACQUISITION, LLC)
AND (2) FOR EXTENET SYSTEMS, INC. TO)
PARTICIPATE IN CERTAIN FINANCING) DOCKET NO. TM15080862
ARRANGEMENTS)

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, on behalf of Petitioners

BY THE BOARD:

On August 3, 2015, Odyssey Acquisition, LLC (“Odyssey” or “Buyer”), and ExteNet Systems, Inc. (“ESI”), (together, the “Petitioners”) submitted a verified Petition (“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 Board approval for: (1) the transfer of indirect control of ESI to Buyer (“Transaction”) and (2) ESI to participate in financing arrangements in an aggregate amount of up to \$475 million. Following the proposed Transaction, ESI will continue to offer the same services in New Jersey at the same rates, terms, and conditions. On August 20, 2015, Petitioners filed a Supplement to the Petition, dated August 19, 2015, (“Supplement”) providing updated ownership information.

BACKGROUND

Odyssey is a Delaware limited liability company with executive offices located in Boca Raton, Florida. Odyssey is a wholly owned direct subsidiary of Odyssey Intermediate Holdings, Inc. (“Holdco”), a Delaware corporation, and itself a wholly owned direct subsidiary of Mount Royal Holdings, LLC (“Parent”), a Delaware limited liability company. The owners of Odyssey are private equity investors: Digital Bridge Small Cell Holdings, LLC; Stonepeak Communication Holdings LLC; and Delta-v Capital MRH LP. Odyssey was formed to acquire, own, construct and/or operate distributed network systems and other communications infrastructure assets. According to the Petition, Odyssey is managed by a team that has extensive investing and operating experience in the communications infrastructure space.

ESI is a privately-held Delaware corporation and a wholly owned direct subsidiary of ExteNet Holdings, Inc. ("ExteNet Holdings"), a Delaware corporation. The executive office of ESI and ExteNet Holdings is at 3030 Warrenville Rd., Suite 340, Lisle, Illinois 60532. ESI designs, builds, owns and operates distributed networks for use by national and regional wireless service providers ("WSPs") in key strategic markets in North America. Using distributed antenna systems (DAS), small cells, Wi-Fi and other technologies, ESI and its subsidiaries (collectively, "ExteNet") deploy distributed networks to enhance coverage and capacity for wireless service in both outdoor and indoor environments. ESI is a "carrier's carrier" providing point-to-point telecommunications services to its WSP customers, and does not provide services directly to retail consumers. In New Jersey, ESI is authorized to provide local exchange and interexchange services. See, In the Matter of the Petition of ClearLinx Network Corporation for Approval to Provide Local Exchange and Interexchange Telecommunications Services Within the State of New Jersey, Docket No. TE05121059, Order dated April 13, 2006. ESI does not have any operations in New Jersey. According to the Petition, ESI has four employees in New Jersey. ESI has also indicated that it does not provide a pension plan and that the Transaction will have no impact on the 401(k) plans offered to its employees.

DISCUSSION

The Petition states that pursuant to the terms of the Agreement and Plan of Merger (the "Agreement") dated as of July 17, 2015, by and among Buyer, Odyssey Merger Sub, Inc. ("Merger Sub"), ExteNet Holdings, and EHI Seller Rep, LLC as representative of the equity holders of ExteNet Holdings, Merger Sub will merge with and into ExteNet Holdings, whereupon the separate existence of Merger Sub will cease and ExteNet Holdings will be the surviving entity. Upon closing of the ExteNet Transaction, ExteNet Holdings will be a direct wholly owned subsidiary of Buyer. Because ESI will remain a direct wholly owned subsidiary of ExteNet Holdings, ESI will become an indirect wholly owned subsidiary of Buyer. The Petition also states that upon closing of the ExteNet Transaction, no person or entity will own or control a majority of the equity interests of Parent. Petitioners provided charts, as updated by the Supplement, depicting the current and post-closing entity ownership structure of Petitioners.

Petitioners also request Board approval for ESI, following closure of the Odyssey/ExteNet Transaction, to participate in new, amended and future financing arrangements in an aggregate amount of up to \$475 million (the "Financing Arrangements"). In order to maintain flexibility to respond to market conditions and requirements and to respond to new acquisition and other business and financing opportunities (including the modification or refinancing of then existing financing arrangements), Odyssey seeks authorization for ESI to participate in Financing Arrangements that are substantially consistent with the following parameters.

Odyssey Acquisition has created Merger Sub, Inc., a wholly owned subsidiary created for the purposes of the ExteNet Transaction. Merger Sub is expected to be the initial borrower under the facilities. Upon closing of the ExteNet Transaction, ExteNet Holdings is expected to become the borrower as the surviving entity from its merger with Merger Sub.

The 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; and bridge loans; or a combination thereof.

The maturity period will be consistent with the maturity period for similar debt instruments and will not be determined until the financing arrangement(s) are finalized. While Buyer expects that the maturity may be up to ten (10) years, after issuance or amendment depending on the type of facility, to maintain flexibility, Odyssey seeks authorization for ESI, following completion of the ExteNet transaction, to participate in Financing Arrangements that have a maturity period consistent with then current market conditions.

Interest rates will be the market rate for similar debt instruments and will not be determined until the Financing Arrangement(s) are finalized. Depending on the type of debt instrument, interest will accrue at a rate(s) that may be fixed or floating, or a combination of fixed and floating rates. To maintain flexibility, Odyssey seeks authorization for ESI, following completion of the ExteNet Transaction, to participate in Financing Arrangements at an interest rate(s) at the then current market conditions.

The borrower and its subsidiaries are expected to be required to pledge their assets as security for some or all of the new financing arrangements and may be required to pledge their assets as security for some or all of any amended or future financing arrangements. To the extent necessary, therefore, Odyssey seeks authorization for ESI, following completion of the ExteNet Transaction, to provide a security interest in its assets for up to \$475 million of the Financing Arrangements. For the secured facilities, the equity of the borrower and its subsidiaries, including ESI and its subsidiaries following the ExteNet Transaction, may be pledged as additional security.

Subject to certain exceptions, the borrower's direct parent and subsidiaries are expected to be guarantors for the new financing arrangements and may be guarantors for amended or future amended financing arrangements. Buyer seeks approval for ESI, following completion of the ExteNet Transaction, to participate as a guarantor or co-guarantor in Financing Arrangements up to \$475 million.

The Financing Arrangements will be used, in part, to fund the consideration for the ExteNet Transaction. The Financing Arrangements may also be used for other acquisitions, refinancing of then current outstanding debt, working capital requirements (including the development and expansion of distributed network systems) and general corporate purposes of Buyer and its subsidiaries, including ESI and its subsidiaries.

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" as set forth above. N.J.A.C. 14:1-5.14(c). Also, pursuant to N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, the Board must determine whether the public utility, or a wholly owned subsidiary thereof, may be unable to fulfill its pension obligations to any of its employees.

Petitioners assert that approval of the proposed transactions will serve the public interest. Petitioners state the financial and managerial resources that Buyer brings will enhance the ability of ExteNet to compete in the telecommunications marketplace. Petitioners also state that since ExteNet is not currently providing services in New Jersey, the ExteNet Transaction will have no adverse impact on the carrier customers of ESI and its subsidiaries. Petitioners also state that the Financing Arrangements will promote competition among telecommunications

carriers by providing Buyer and its subsidiaries with access to greater financial resources that will allow Buyer's subsidiaries, such as ESI, to deploy additional communications infrastructure and compete more effectively. Petitioners claim that ESI's participation in the Financing Arrangements is necessary and appropriate, is consistent with the provision of its services to wireless carriers who in turn will be enabled to improve their services provided directly to the public, will not impair its ability to perform such services, and will promote the purposes of ESI.

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed this matter and, by letter states that it "does not oppose the Board's grant of Petitioners' requests contained in the Verified Joint Petition." Letter from Rate Counsel to the Board dated August 31, 2015, page 3.

FINDINGS AND CONCLUSIONS

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 Petitioners' 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 upon the record, and that the transactions 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 transfer of control and financing arrangements are consistent with the applicable law and are not contrary to the public interest, and **HEREBY AUTHORIZES** Petitioners to participate in the transaction and financing arrangements described herein.

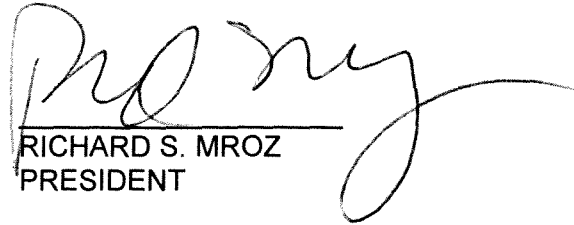
This Order is subject to the following provisions:

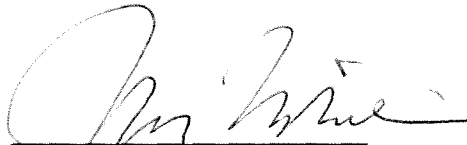
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting Petitioners.
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. Petitioners 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. Petitioners shall notify the Board of any material default on the terms of the notes within five business days of such occurrence.


This Order shall be effective October 25, 2015.


DATED: *October 15, 2015*

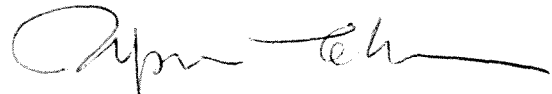
BOARD OF PUBLIC UTILITIES
BY:


RICHARD S. MROZ
PRESIDENT

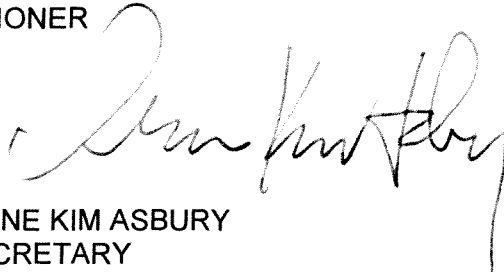

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

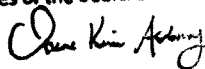

DIANNE SOLOMON
COMMISSIONER


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



IN THE MATTER OF THE VERIFIED JOINT PETITION OF ODYSSEY ACQUISITION, LLC
AND EXTENET SYSTEMS, INC. FOR APPROVAL (1) OF THE TRANSFER OF INDIRECT
CONTROL OF EXTENET SYSTEMS, INC. TO ODYSSEY ACQUISITION, LLC AND (2) FOR
EXTENET SYSTEMS, INC. TO PARTICIPATE IN CERTAIN FINANCING ARRANGEMENTS
DOCKET NO. TM15080862

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