



Agenda Date: 2/24/16  
Agenda Item: IVC

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION ) ORDER OF APPROVAL  
OF X5 OPCO LLC, ASSIGNEE, AND CORNERSTONE )  
TELEPHONE COMPANY, LLC, ASSIGNOR FOR )  
APPROVAL FOR ASSIGNEE TO ACQUIRE THE )  
ASSETS OF ASSIGNOR ) DOCKET NO. TM16010036

**Parties of Record:**

**Andrew O. Isar**, Miller Isar, Inc, for X5 OpCo LLC and CornerStone Telephone  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On January 13, 2016, X5 OpCo LLC (“X5 OpCo”) assignee, and Cornerstone Telephone Company, LLC (“CornerStone”), assignor (collectively, “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 whereby X5 OpCo would acquire all of the regulated telecommunications assets of CornerStone, including customer accounts, through a mutually negotiated Asset Purchase Agreement (“Transaction”). Upon consummation of the Transaction, CornerStone assets, including customer accounts, will be transferred to X5 OpCo, which will become the presubscribed local exchange and interexchange service provider for CornerStone customers and X5 OpCo will file any necessary tariff revisions to incorporate Cornerstone’s current services and rates so that customers will continue to receive services under the same terms, rates, and conditions that they currently receive without any immediate changes. Concurrently with this petition, Petitioners also filed an Application for Waiver of certain provisions of the Board’s Mass Migration rules, N.J.A.C. 14:10-12.1 et seq. CornerStone also requests that its current authorization to provide service in New Jersey along with its tariff be cancelled following the close of the Transaction.

**BACKGROUND**

X5 OpCo is a privately held limited liability company organized under the laws of the State of Delaware. X5 OpCo is a wholly owned subsidiary of X5 Holdings LLC which, in turn, is majority owned and controlled by NewSpring Holdings LLC. In New Jersey, X5 OpCo is authorized to

provide local exchange and interexchange services. See In the Matter of the Verified Petition of X5 OpCo LLC for an Order of Approval to Provide Competitive Intrastate Interexchange, Local Exchange, and Switched Access Telecommunications Services Throughout the State of New Jersey, Docket No. TE15101214, Order dated December 16, 2015. Additional information and qualifications of X5 OpCo can be found in that Order.

CornerStone Telephone Company, LLC is a New York limited liability company that provides broadband services, traditional time division multiplex voice, as well as interconnected Voice over Internet Protocol and other services. CornerStone provides services primarily to non-residential customers. In New Jersey, CornerStone was authorized to provide local exchange and interexchange services on December 2, 2005. See In the Matter of the Petition of CornerStone Telephone Company, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services Within the State of New Jersey, TE05080732, Order dated December 2, 2005.

## **DISCUSSION**

According to the petition, on November 30, 2015, CornerStone and X5 OpCo entered into an Asset Purchase Agreement (“Agreement”) whereby CornerStone agreed to sell, and X5 OpCo agreed to acquire, substantially all CornerStone assets including New Jersey telecommunications assets and local exchange and interexchange subscribers located in New Jersey and other jurisdictions served by CornerStone. Pursuant to the terms of the Agreement, X5 OpCo is to provide transferred CornerStone subscribers services at the same rates, terms and conditions provided by CornerStone. The petition states that CornerStone has made an affirmative business decision to cease the provision of telecommunications services following the consummation of the Transaction and regulatory approvals. Following approval by the Board of the Transaction and once all customers have been transferred, CornerStone requests that its authority to provide telecommunications services in New Jersey and its tariff be cancelled.

Petitioners have provided more than 30 days advance notice of the Transaction to customers pursuant to FCC rules, specifically, 47 C.F.R. §64.1120(e). Petitioners have requested waivers of certain provisions of the Board’s mass migration guidelines found at N.J.A.C. 14:10-12.1 et seq. Specifically, Petitioners request waiver of the sixty day notice period pursuant to N.J.A.C. 14:10-12.3(b), submission of a governing exit plan under N.J.A.C. 14:10-12.3(b)(2), submission of customer notice to incumbent local exchange carriers and network service providers pursuant to N.J.A.C. 14:10-12.5(c), provision of subscriber lists to the Board pursuant to N.J.A.C. 14:10-12.7, and submission of progress reports to the Board pursuant to N.J.A.C. 14:10-12.8.

According to the petition, X5 OpCo will provide service to former Cornerstone subscribers under separate agreements currently in effect or alternatively under its tariff, amended to incorporate CornerStone service rates, terms, and conditions, or under the Companies’ current tariffs following Board approval of the Transaction.

The petition also states that the Transaction will provide additional capitalization needed to expand services to the public. The petition further notes that CornerStone’s New Jersey customers are primarily commercial subscribers.

By letter dated February 9, 2016, the New Jersey Division of Rate Counsel (“Rate Counsel”) filed comments indicating that it “does not oppose Board approval of Petitioners’ requests in the Joint Petition.” Letter from Rate Counsel to the Board at 1. Furthermore, “Rate Counsel does not object to Petitioners’ requests including relaxation, modification and/or waiver of the Board’s Mass Migration Rules under the fact-sensitive case herein.” Id. at 2.

## **FINDINGS AND CONCLUSION**

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 Petitioners have shown good cause supporting waivers of certain of the Board’s Mass Migration Rules, as explained below, and that the waivers are in the best interest.

Specifically, as set forth in the request for waivers, Petitioners provided notice to customers on December 28, 2015 pursuant to 47 C.F.R. §64.1120(e), the contents of which are substantially similar to that required by the Board’s rules. Additionally, the majority of the information required under N.J.A.C. 14:10-12.3(b)(2) was provided to the Board in the petition. As to the remaining requests, the Transaction does not entail a discontinuance of service, lessening the public benefit of notification to the ILEC and other network service providers. In contrast, the transfer of customers from Cornerstone to X5 OpCo will be virtually seamless. Furthermore, the fact that Cornerstone provides services only to a limited number of residential subscribers who will continue to receive service at the same rates, terms and conditions, supports granting the waiver requests. Again, the Transaction will be transparent to customers and will not entail a discontinuance of service. While the consideration of waivers is fact-sensitive, it is also worth noting that the Board has granted waiver requests such as these in the past. Customers here will not be prejudiced and will not suffer detrimental impact by the requested waivers. The Board therefore **FINDS** good cause supporting the waivers and **HEREBY GRANTS** the waiver requests, for the reasons set forth in Petitioners’ filings and as set forth above.

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, CornerStone is responsible for the filing of its final annual report and any unpaid assessment liabilities due to the Board and to the Division of Rate Counsel. X5 OpCo shall also file any necessary tariff revisions with the Board that will incorporate CornerStone’s current services and rates following the closing. Once all customers have been transferred to X5 OpCo, CornerStone shall surrender its authority to the Board.

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.

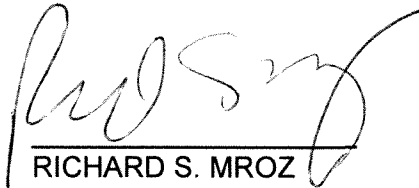
Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, **FINDS** that the asset and customer transfer is in accordance with the law and in the public interest. The Board **HEREBY APPROVES** the request by Petitioners for the

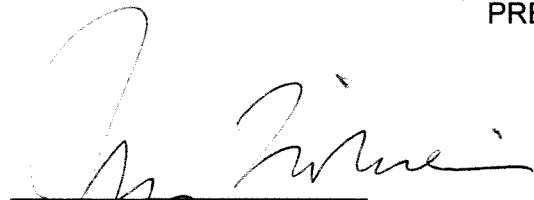
Transaction. The Board **HEREBY ORDERS** that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer.


This Order shall be effective March 5, 2016.

DATED: 2.24.16


BOARD OF PUBLIC UTILITIES  
BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

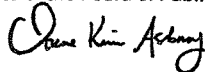
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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 X5 OPCO LLC, ASSIGNEE, AND  
CORNERSTONE TELEPHONE COMPANY, LLC, ASSIGNOR FOR APPROVAL FOR  
ASSIGNEE TO ACQUIRE THE ASSETS OF ASSIGNOR  
DOCKET NO. TM16010036

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