



STATE OF NEW JERSEY
Board of Public Utilities
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www.nj.gov/bpu/

TELECOMMUNICATIONS

VERIFIED JOINT PETITION OF WEST)
CORPORATION, TRANSFEROR AND OLYMPUS) ORDER
HOLDINGS II, LLC TRANSFEREE FOR APPROVAL OF)
THE INDIRECT TRANSFER OF CONTROL OF WEST)
SAFTEY COMMUNICATIONS INC. AND WEST)
TELECOM SERVICES, LLC OPERATING COMPANIES) DOCKET NO. TM17050555

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 May 25, 2017, West Corporation ("Transferor" or "West") and Olympus Holdings II, LLC ("Olympus" or "Transferee," and, collectively with West, 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, 48:3-7 and 48:3-10, requesting approval to complete a merger transaction whereby Olympus, by and through its wholly owned subsidiary Olympus Merger Sub, Inc. ("Merger Sub") will acquire ultimate control of West and West's wholly-owned subsidiaries, including West Safety Communications Inc. ("West Safety") and West Telecom Services, LLC ("West Telecom," and, collectively with West Safety, the Operating Companies)(the "transaction"). Following the proposed transaction, the Operating Companies will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

West is a publicly traded Delaware corporation headquartered at 11808 Miracle Hills Drive, Omaha, Nebraska. Its primary shareholders are funds managed by Thomas H. Lee Partners, L.P. (the "THL Funds"), which currently hold approximately 22 percent of West, and funds affiliated with Quadrangle Group LLC ("Quadrangle Funds"), which currently hold approximately five percent of West. The THL Funds and Quadrangle Funds have agreed to act together on certain matters with respect to West and its subsidiaries, including with respect to the election of West's board of directors. According to the petition, West is the direct or indirect parent

company of several subsidiary companies, including West Telecom and West Safety. Through its subsidiaries, West is a global provider of communications and network infrastructure services, primarily to business customers throughout the United States and internationally.

West Telecom (f/k/a KMC Data LLC and Hypercube Telecom, LLC) is a wholly owned indirect subsidiary of West. West Telecom is a Delaware limited liability company, and its principal place of business is located in Lancaster, Texas. The petition states that West Telecom provides wholesale local and national tandem switching and transport services, termination services, toll-free origination services, and Direct Inbound Dial services to telecommunications and information service providers, including wireless carriers, wireline competitive local exchange carriers ("CLECs") and interexchange carriers, cable telephony providers, and Voice over Internet Protocol ("VoIP") providers. West Telecom provides service to its customers using its nationwide optical backbone network that is both IP and TDM-based. West Telecom provides services in 47 states and the District of Columbia. In New Jersey, West Telecom is authorized to provide local exchange and interexchange services. See, I/M/O the petition of KMC Data, LLC for authority to provide local exchange and interexchange telecommunications services in the state of New Jersey, Docket No. TE01100637 (October 23, 2003). West Telecom provides regulated telecommunications services to approximately 31 customers in New Jersey.

West Safety (f/k/a Intrado Communications Inc.) is a wholly owned indirect subsidiary of West. West Safety is a Delaware corporation, and its principal place of business located in, Longmont, Colorado. West Safety provides emergency communications services and infrastructure systems to public safety organizations and service providers, including public safety answering points, wireless carriers, wireline CLECs, cable telephony providers, and VoIP providers. West Safety's services are currently available in 47 states and the District of Columbia. In New Jersey, West Safety was authorized by the Board to provide local exchange and interexchange services. See, In the Matter of the Verified Petition of Intrado Communications Inc. for Authorization to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE15020263 (May 19, 2015). West Safety currently has no customers in New Jersey.

Olympus is a Delaware limited liability company, and its principal place of business is located in New York, New York. Olympus was formed on May 5, 2017 for the purpose of consummating this transaction and ultimately acquiring control of West and the Operating Companies. Olympus is a holding company and will be ultimately controlled by a principal of Apollo Global Management, LLC ("Apollo"), Joshua J. Harris, a citizen of the United States. The equity of Olympus ultimately is held by certain investment funds managed by affiliates of Apollo. Apollo is a global investment management firm that raises, invests and manages funds for pension, endowment funds as well as for institutional and individual investors.

Petitioners state that Olympus is qualified managerially, technically, and financially to own and control West and the Operating Companies. Petitioners assert that the proposed transaction will serve the public interest by promoting competition among telecommunications providers. Petitioners state that the transaction will allow West to strengthen its ability to compete in the market for telecommunications services in New Jersey, to provide innovative products and services, and to better respond to the competitive telecommunications environment as the increase in competition will benefit consumers through the products and services offered in the marketplace. Moreover, Petitioners state the proposed transaction will not materially impact approximately 75 employees located in New Jersey as there are no definitive plans to reduce

employment as a result of the transaction. Petitioners state the ability to fulfill obligations to any New Jersey employees will not be affected with respect to existing pension or other benefits.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated July 13, 2017, stating it does not object to approval of the proposed acquisition provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Specifically, as a condition of approval, Rate Counsel urges that the Board require Petitioners to notify the Board and Rate Counsel with an appropriate written explanation to be received a minimum of thirty (30) days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%) throughout a period of four (4) years post-issuance of the Board order.

By letter dated July 21, 2017, the Petitioners responded to Rate Counsel comments. While objecting to a thirty (30) day advance written notice requirement as unprecedented and unduly intrusive into the management of companies that provide solely competitive services, Petitioners also object to a four (4) year reporting period. Petitioners are willing to accept a three (3) year reporting period.

DISCUSSION

Pursuant to N.J.S.A. 48:2-51.1(a), the Board 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.

On May 9, 2017, Mount Olympus Holdings, Inc., an indirect parent of Olympus, Merger Sub, a wholly owned subsidiary of Olympus, and West entered into an Agreement and Plan of Merger (the "Merger Agreement") pursuant to which Merger Sub will merge with and into West, with West continuing as the surviving corporation. At closing, the current issued and outstanding shares of West will be converted into the right for each West shareholder to receive a cash payment. As a result of the transaction, West will become a wholly owned, direct subsidiary of Olympus, and the Operating Companies will become wholly owned, indirect subsidiaries of Olympus.

According to the petition, other than the investment funds¹ and intermediary holding companies, following consummation of the transaction, no individual or entity will directly or indirectly hold 10 percent or more of the equity of West and the Operating Companies. AP VIII Olympus VoteCo, LLC, a newly formed special purpose Delaware limited liability company ("VoteCo"), will hold 100 percent of the indirect voting rights in West and the Operating Companies. Upon consummation of the transaction, VoteCo will be wholly owned and controlled by three members who are Apollo investment professionals. Upon consummation of the transaction, Joshua J. Harris will own 51 percent of the voting membership interests and 33.3 percent of the

¹ The AP Funds, collectively, are AOP VII (AIV), L.P., Apollo Overseas Partners (Delaware 892) VIII, L.P. and Apollo Investment Fund VII, L.P.

equity membership interests in VoteCo, and Matthew Nord and Robert Kalsow-Ramos will each own 24.5 percent of the voting membership interests and 33.3 percent of the equity membership interests in VoteCo.

Petitioners state that the proposed transaction does not involve the assignment of either West Telecom's or West Safety's telecommunications authorizations or customers. All current New Jersey customers of West Telecom and West Safety (if any) as of closing will continue to be served by the Operating Companies pursuant to their existing authorizations, and the transaction will not result in a change in the name of either Operating Company. Customers will continue to receive their existing services at the same rates, terms, and conditions and therefore will be transparent to customers. Petitioners state that since there is no change to any customers service or provider, customer notice is not required under N.J.A.C. 14:10-12.5.

Petitioners state that there will be no immediate changes in services, or rates terms and conditions of service, therefore the transaction will be seamless and transparent to customers. Any future changes in the rates, terms, and conditions of service will be undertaken pursuant to customer contracts and any applicable federal and state notice and tariff requirements. The transaction is not expected to result in the discontinuance, reduction, loss, or impairment of service to any customer. Petitioners further state that an employee pension plan does not exist for affected employees but their existing rights in other retirement plans offered will be retained post-transaction.

FINDINGS AND CONCLUSIONS

In considering a transfer of control request, the Board shall evaluate the impact of the acquisition 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. N.J.S.A. 48:2-51.1(a). 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, 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.

After a careful review of this matter, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the combined enterprise would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions. The provision of service quality on competitive offerings is in the public interest. The Board notes its concern to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. West Corporation currently employs 61 persons in New Jersey and Petitioners stated there is no definitive plan to reduce employment as a result of the transaction. While the Board concurs with Rate Counsel that there is a need for the Board to be notified when there is a reduction in staffing needs consistent with the Board's findings in similar merger reviews, the Board **FINDS** that the provisions adopted therein are appropriate and should be maintained. Accordingly, no additional pre-reduction reporting requirements will be imposed at this this time. The Board, therefore, requires Petitioners to notify the Board, providing an explanation if there is a net loss

of New Jersey employees of Petitioners that is greater than fifteen percent (15%) for three (3) years post-issuance of this order. As Petitioners have assured that existing employee retirement plans will be retained, the Board is persuaded, consistent with N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, that Petitioners are not unable to fulfill pension obligations.

Accordingly, the Board **FINDS** that the proposed transaction is consistent with applicable law and is not contrary to the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

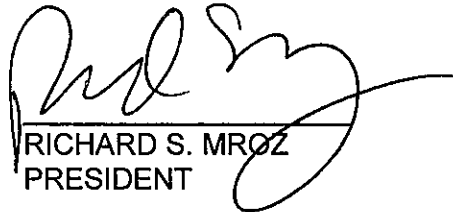
The Order is issued subject to the following provisions:

1. For three (3) years from the issuance of this Order, if there is any net loss of jobs in New Jersey, greater than (15%), Petitioners shall notify the Board of such change and provide an appropriate explanation.
2. The Order is subject to Petitioners notifying the Board Secretary and the Office of Cable Television and Telecommunications, in writing, within five (5) days of the date of the closing of the proposed transaction.

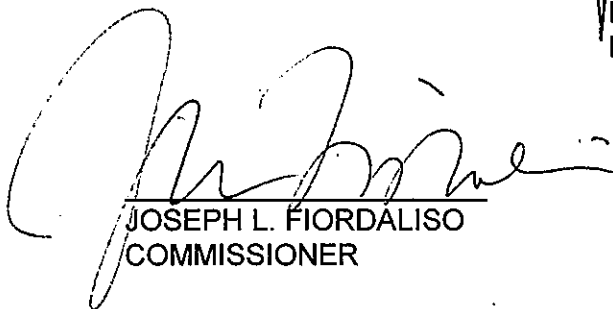
This Order shall become effective on September 2, 2017.

DATED: 8/23/17

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



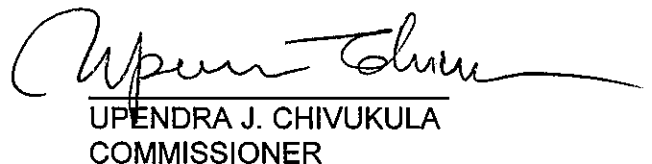
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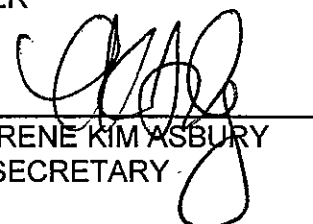


DIANNE SOLOMON
COMMISSIONER



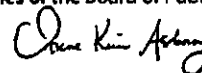
UPENDRA J. CHIVUKULA
COMMISSIONER

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



**VERIFIED JOINT PETITION OF WEST CORPORATION, TRANSFEROR AND OLYMPUS HOLDINGS II, LLC TRANSFEREE FOR APPROVAL OF THE INDIRECT TRANSFER OF CONTROL OF WEST SAFTEY COMMUNICATIONS INC. AND WEST TELECOM SERVICES, LLC OPERATING COMPANIES
DOCKET NO. TM17050555**

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