



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF) ORDER
BANDWIDTH.COM CLEC, LLC FOR APPROVAL TO)
TRANSFER INDIRECT CONTROL) DOCKET NO. TM17090971

Parties of Record:

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

BY THE BOARD:

On September 11, 2017, Bandwidth.com CLEC, LLC ("Bandwidth CLEC" or "Petitioner") submitted a Verified Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10 requesting Board approval to transfer control of Bandwidth CLEC to David A. Morken ("Transferee") in connection with a planned restructuring of stock by its direct parent Bandwidth.com, Inc. ("Bandwidth") related to an anticipated initial public offering ("IPO") of Bandwidth (the "transaction"). Following completion of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions.

BACKGROUND

Bandwidth CLEC is a Delaware limited liability company and a wholly owned subsidiary of Bandwidth, a Delaware corporation with headquarters in Raleigh, North Carolina. According to the petition, Bandwidth, together with its subsidiary Bandwidth CLEC (together, "the Company") is a provider of cloud-based platforms for enterprises and also provides Internet protocol ("IP") voice networks. Its customers include large enterprises as well as small and medium sized businesses. In New Jersey, Bandwidth CLEC is authorized to provide facilities-based local exchange and interexchange services. See In the Matter of the Petition of Bandwidth.com CLEC, LLC for Authority to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE08020078 (April 9, 2008).

Mr. Morken is the cofounder, chief executive officer and chairman of Bandwidth. According to the petition, he cofounded the company 18 years ago and led the Company to develop and deploy its software application programming interfaces ("APIs") for voice and messaging functionality as well as end-to-end communications solutions through its Communications platform-as-a-service ("CPaaS") offerings. Prior to the anticipated IPO and inclusive only of actual outstanding securities, Bandwidth's equity interests are held principally by David A. Morken (approximately 12%), James A. Bowen (approximately 13%), Henry R. Kaestner (approximately 22%), and Carmichael Investment Partners, LLC (approximately 15%). No other entity or individual holds a 10 percent or greater interest in Bandwidth.

DISCUSSION

According to the petition, on August 16, 2017, Bandwidth filed a Securities and Exchange Board ("SEC") Form S-1 draft registration statement for the IPO. The planned IPO of Bandwidth includes a restructuring of stock by converting existing shares and, as a result, Mr. Morken will obtain a majority of the voting power of the outstanding Bandwidth stock. The IPO is not expected to result in any new equity owners who will hold 10 percent or more ownership in Bandwidth CLEC. The restructuring will be accomplished by way of a conversion of existing shares of stock. As a result, Mr Morken will control Bandwidth CLEC. Following the transaction, Bandwidth CLEC will continue to provide service to its customers at the same rates, terms, and conditions available under existing contracts and without interruption.

Petitioners contend that the IPO is expected to infuse capital for greater flexibility on corporate and financial transactions thus allowing stronger competition. Petitioners state that the IPO will not affect the technical or managerial qualifications of Bandwidth CLEC, which will continue under the current management team including Mr. Morken. Bandwidth CLEC states there are no employees located in New Jersey and it does not provide an employee pension plan.

The New Jersey Division of Rate Counsel submitted comments by letter dated September 27, 2017, stating it does not oppose approval of the proposed acquisition based on the expanded and enhanced services that Petitioners expect to provide throughout New Jersey. Rate Counsel states the transaction will not negatively affect current customers, who will continue to receive the same services under the same terms, rates and conditions.

FINDINGS AND CONCLUSIONS

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. 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.

After a thorough review of the record, the Board concludes that there will be no negative impact on rates or service quality as customers will continue to receive the same services at the same rates and under the same terms and conditions. The Board is satisfied that positive benefits

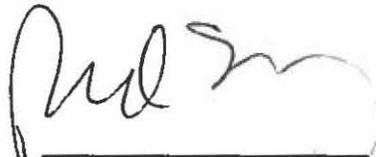
will flow to customers based on the record, the transaction will strengthen the competitive posture of Petitioner in the telecommunications market, and the reorganization will result in a corporate structure that will enable Petitioner to more efficiently achieve potential operational, administrative and strategic objectives. Bandwidth CLEC does not employ New Jersey personnel, therefore the ability to fulfill pension obligations is not reviewable or considered.

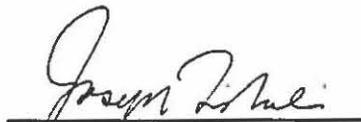
Accordingly, the Board **FINDS** that the proposed transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed transaction will have no impact on the provision of safe, adequate and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioner to complete the proposed transaction.

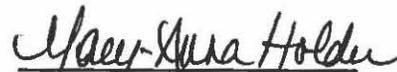
This Order shall be effective December 1, 2017.

DATED: 11/21 11/21/17

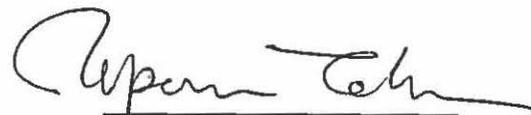
BOARD OF PUBLIC UTILITIES
BY:

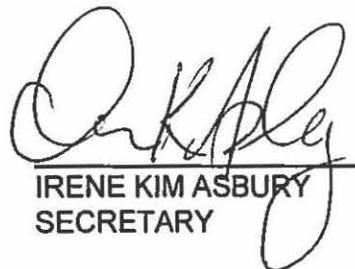

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

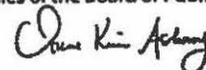

MARY-ANNA HOLDEN
COMMISSIONER


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 PETITION OF BANDWIDTH.COM CLEC, LLC FOR
APPROVAL TO TRANSFER INDIRECT CONTROL
DOCKET NO. TM1709091**

SERVICE LIST

Dennis C. Linken, Esq.
Scarinci & Hollenbeck, LLC
100 Valley Brook Avenue
P.O. Box 790
Lyndhurst, NJ 07071
dlinken@sh-law.com

Tamar Finn, Esq.
Danielle Burt, Esq.
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Ave., N.W.
Washington, DC 20004
tamar.finn@morganlewis.com
danielle.burt@morganlewis.com

W. Christopher Matton
General Counsel
Bandwidth.com
900 Main Campus Drive, Suite 500
Raleigh, NC 27606
cmatton@bandwidth.com

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

Veronica Beke, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street, 2nd Floor
Post Office Box 45029
Newark, NJ 07101-45029
veronica.beke@law.njoag.gov

Lawanda R. Gilbert, Esq., Director
Rocco Della Serra
Board of Public Utilities
Office of Cable Television and
Telecommunications
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
lawanada.gilbert@bpu.nj.gov
rocco.della-serra@bpu.nj.gov

Carol Artale, Esq.
Legal Specialist
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
carol.artale@bpu.nj.gov