



**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 )  
OF MLN TOPCO LTD., MITEL NETWORKS )  
CORPORATION, AND MITEL CLOUD SERVICES, INC. )  
F/K/A MITEL NETSOLUTIONS, INC. FOR APPROVAL )  
TO TRANSFER INDIRECT CONTROL OF MITEL )  
CLOUD SERVICES, INC TO MLN TOPCO LTD. )

ORDER

DOCKET NO. TM18050568

**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 May 21, 2018, MLN TopCo Ltd. ("TopCo" or "Transferee"); Mitel Networks Corporation ("Mitel" or "Transferor"); and Mitel Cloud Services, Inc. ("MCSI" or "Licensee") (collectively, the "Petitioners"), 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 the extent required, to transfer indirect control of MCSI to TopCo (the "Transaction"). Following closing of the transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to MCSI customers.

**BACKGROUND**

Mitel, a Canadian corporation is a provider of cloud and on-site communications and collaboration solutions for business customers, serving end users worldwide. Mitel is headquartered in Ottawa, Canada, with offices, partners and resellers worldwide.

MCSI, a Texas corporation and wholly owned indirect subsidiary of Mitel, resells: local communications services; domestic and international long-distance services; calling card services; 800 services; dedicated data services; Internet, DSL, MPLS services and Web voice and videoconferencing; disaster recovery solutions; and network monitoring and management. MCSI resells telecommunications services through its agreements with U.S. long-distance carriers. In addition, MCSI is licensed as a competitive local exchange and interexchange carrier throughout the United States, and registered as an interconnected VoIP provider and wireless/CMRS reseller in numerous states. In the State of New Jersey, MCSI (f/k/a Inter-Tel NetSolutions, Inc.) is registered as a provider of resold interexchange services and was

approved by the Board to provide resold and facilities-based competitive local exchange services See, In the Matter of the Petition of Inter-Tel NetSolutions, Inc. to Provide Local Exchange Services throughout New Jersey, Docket No. TE05050456, (August 1, 2005). MCSI has approximately 1,029 customers in New Jersey.

TopCo is a Cayman Islands exempted company formed for the purposes of implementing this Transaction. TopCo is a wholly owned subsidiary of Searchlight II MLN, L.P., a Cayman Islands exempted limited partnership and master aggregator of an investor group led by funds affiliated with Searchlight Capital Partners, L.P. ("Searchlight"). Searchlight is a private equity investment group and has worked in partnership with leading businesses throughout North America and Europe. The petition states that Searchlight's funds invest in companies across various sectors, including communications, media, consumer, and business services.

The granting of competitive local exchange ("CLEC") authority conveys certain rights and privileges upon MCSI, which are reserved for the provision of facilities-based landline services. While CLECs may also provide other telecommunications services, such as wireless, small cell or distributed antenna systems, these service offerings are beyond the scope of Board jurisdiction and the granting of CLEC authority. Specifically, the Board granting of CLEC authority is limited to the provision of competitive facilities-based local and interexchange services. To the extent that a CLEC provides non-regulated telecommunications services, the CLEC benefits, rights or privileges are not applicable to those non-regulated services.

## **DISCUSSION**

Pursuant to the Arrangement Agreement (the "Agreement"), dated as of April 23, 2018, by and between Mitel, MLN Acquisition Co ULC ("MLN"),<sup>1</sup> and TopCo, MLN will acquire all of the issued and outstanding common shares in the capital of Mitel in an all-cash transaction valued at approximately \$2.0 billion, including Mitel's net debt.<sup>2</sup> Subsequently, Mitel and MLN will amalgamate under Canadian law to form a new combined entity, Mitel Networks ULC ("New Mitel"), a British Columbia unlimited liability company. The shares in Mitel's U.S. subsidiaries will be transferred from New Mitel to MLN US HoldCo LLC, a Delaware limited liability company and indirect subsidiary of TopCo, through a series of steps. As a result, at the closing of the Transaction, Licensee will become a wholly owned indirect subsidiary of TopCo through a number of intermediate holding companies.

Petitioners state that after the Transaction closes, Robeli Agnes, the current Director, Chairman and President of MCSI, will continue to serve in his existing role. Further, petitioner states that the Transaction will occur at the holding company level and will have no adverse impact on Licensee's customers. As such, the Transaction will not result in service disruption, termination, or customer confusion.

Petitioners contend that TopCo is managerially, technically, and financially well-qualified to complete the Transaction. Additionally, Transferee will utilize the experience of management and employees with MCSI to supply the continued provision of services. Supported by the

---

<sup>1</sup> MLN is an unlimited liability company and indirect subsidiary of TopCo, organized under the laws of British Columbia, Canada, formed for purposes of effectuating the Transaction. MLN will be amalgamated into New Mite! and will have no separate existence following the completion of the Transaction.

<sup>2</sup> In a separate filing (the BPU Docket Number TF18050567 or "Financing Petition") petitioners seek approval for MCSI to participate in a related financing transaction ("Financing") of MLN US HoldCo LLC. The proceeds of such financing will fund in full or part the Transaction described herein.

experienced management and financial resources of Transferee, MCSI will continue to have the managerial, technical and financial qualifications to provide high quality telecommunications services.

Petitioners submit that the Transaction is in the public interest. Licensee will continue to be managed and operated by the same officers and personnel, but will be supplemented by management of Transferee. The Transaction will provide MCSI with access to Transferee and the Searchlight-managed investor group's financial and operational expertise, permitting MCSI to continue to provide robust unified communications solutions to its customers and to better compete in the telecommunications marketplace. Transferee and its affiliates will seek to build on MCSI's existing assets, supply investment in new infrastructure and continue to offer innovative and high quality services to existing customers.

The New Jersey Division of Rate Counsel submitted comments by letter dated May 29, 2018, stating it does not oppose 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, providing an appropriate explanation in writing within a minimum of thirty days prior to effectuating a reduction in New Jersey jobs that is greater than fifteen percent (15%), throughout a three (3) year period following approval.

By letter dated June 7, 2018, Petitioners object to the proposal by Rate Counsel stating that such a condition requiring prior notice is not consistent with the Board's prior decisions in other transfer of control transactions in substantially identical circumstances involving other competitive providers serving the New Jersey market. Petitioners state that Rate Counsel's proposal for advance notice, if adopted would be significantly more burdensome on Petitioners than a requirement to notify the Board after the fact. Imposing an advance notice requirement would place Petitioners at a competitive disadvantage compared to other authorized providers operating in the same market but not subject to such a requirement. Further, Petitioners note that Rate Counsel's proposal is not consistent with what the Board has ordered in similar dockets where the Board has required companies to report after the fact, for three years following closing, headcount reductions in New Jersey greater than 15%.

### **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 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 and the provision of service quality on competitive offerings is in the public interest.

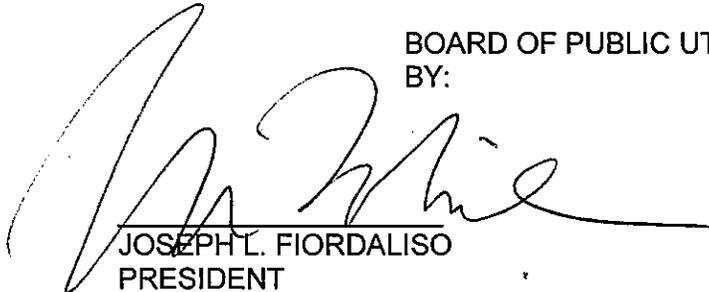
The Board shares the concern of Rate Counsel to avoid the potential for diminished service, service quality and customer service capability based on post-transaction employment attrition. Of the three petitioners, only one, Mitel Cloud Services, Inc., has any employees in New Jersey and currently that total is two. Petitioners stated there are no immediate plans with respect to these employees. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See, In the Matter of the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, providing a written explanation if there is a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a 3-year period after the date of closing.

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** Petitioners to complete the proposed transaction.

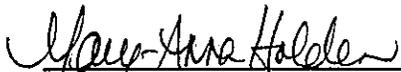
This Order shall be effective August 4, 2018.

DATED: 7/25/18

BOARD OF PUBLIC UTILITIES  
BY:



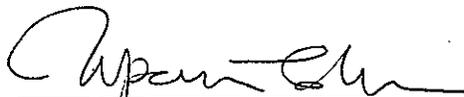
JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



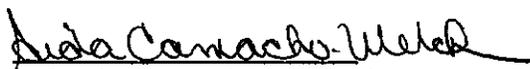
DIANNE SOLOMON  
COMMISSIONER



UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF THE VERIFIED JOINT PETITION OF MLN TOPCO LTD., MITEL NETWORKS CORPORATION, AND MITEL CLOUD SERVICES, INC F/K/A MITEL NETSOLUTIONS, INC. FOR APPROVAL TO TRANSFER INDIRECT CONTROL OF MITEL CLOUD SERVICES, INC TO MLN TOPCO LTD.  
DOCKET NO. TM18050568**

SERVICE LIST

Dennis C. Linken, Esq.  
Scarinci & Hollenbeck, LLC  
1100 Valley Brook Avenue  
Lyndhurst, NJ 07071-0790  
[dlinken@sh-law.com](mailto:dlinken@sh-law.com)

Andrew D. Lipman  
Russell M. Blau  
Denise S. Wood  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Ave., N.W.  
Washington, DC 20004  
[Andrew.lipman@morganlewis.com](mailto:Andrew.lipman@morganlewis.com)  
[Russell.blau@morganlewis.com](mailto:Russell.blau@morganlewis.com)  
[Denise.wood@morganlewis.com](mailto:Denise.wood@morganlewis.com)

Nadir Nurmohamed  
Searchlight Capital Partners, L.P.  
22 Adelaide Street West  
35<sup>th</sup> Floor  
Toronto, ON M5H 4E3  
Canada  
[nnurmohamed@searchlightcap.com](mailto:nnurmohamed@searchlightcap.com)

Stefanie A. Brand, Esq.  
Maria Novas-Ruiz, Esq.  
Director, Division of Rate Counsel  
140 Front Street, 4<sup>th</sup> Floor  
Trenton, NJ 08625  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)  
[mnovas-ruiz@rpa.state.nj.us](mailto:mnovas-ruiz@rpa.state.nj.us)

Lawanda R. Gilbert, Esq., Director  
Rocco Della Serra  
Office of Cable Television and  
Telecommunications  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>d</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[lawanda.gilbert@bpu.nj.gov](mailto:lawanda.gilbert@bpu.nj.gov)  
[rocco.della-serra@bpu.nj.gov](mailto:rocco.della-serra@bpu.nj.gov)

Carol Artale, Esq.  
Deputy Chief Counsel  
Board of Public Utilities  
44 South Clinton Avenue, 3<sup>d</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
[carol.artale@bpu.nj.gov](mailto:carol.artale@bpu.nj.gov)

Geoffrey R. Gersten, Esq.  
Deputy Attorney General  
Department of Law & Public Safety  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07101-45029  
[Geoffrey.gersten@law.njoag.gov](mailto:Geoffrey.gersten@law.njoag.gov)