



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

I/M/O VERIFIED JOINT PETITION OF TRANSBEAM,)
INC. AND GC PIVOTEL, LLC D/B/A GLOBAL) ORDER
CAPACITY FOR APPROVAL OF A PRO FORMA)
INTERNAL CONSOLIDATION) DOCKET NO. TM18070712

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:¹

On July 11, 2018, Transbeam, Inc. ("Transbeam") and GC Pivotal, LLC d/b/a Global Capacity ("Global Capacity") (together, "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. 48:3-7 requesting Board approval to complete an internal consolidation of Transbeam into Global Capacity (the "Consolidation"). Following closing of the proposed Consolidation, customers will continue to receive services at the same rates, terms, and conditions under which they currently receive in the State.

BACKGROUND

Global Capacity is a Delaware limited liability company. Transbeam is a Delaware corporation. Global Capacity and Transbeam are direct, wholly owned subsidiaries of GTT Americas, LLC ("GTTA"), a Delaware limited liability company which in turn is a direct, wholly owned subsidiary of GTT Parent, a Delaware corporation. GTT Parent is a publicly traded company with no majority shareholder with headquarters located in McLean, Virginia. In New Jersey, Transbeam is authorized to provide facilities based local exchange telecommunications services. See, In the Matter of the Petition of Transbeam, Inc. for Authorization to Provide Resold and Facilities-Based Local Exchange Telecommunications Services in the State of New Jersey, Docket No. TE00050309 (July 9, 2003). In New Jersey, Global Capacity is authorized to provide facilities-based local exchange and interexchange telecommunications services. See, In the Matter of

¹ Commissioner Robert M. Gordon did not participate.

the Petition of GC Pivotal, LLC d/b/a Global Capacity for Authorization to Provide Resold and Facilities-Based Local Exchange Telecommunications Services in the State of New Jersey, Docket No. TE14091076 (November 21, 2014). Petitioners do not have any employees of their own. GTTA has approximately 27 employees working in New Jersey.

The granting of competitive local exchange ("CLEC") authority conveys certain rights and privileges upon Transbeam and Global Capacity, 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

The Petition states that in order to simplify its corporate structure, GTT Parent is undertaking certain pro forma intra-company changes including the Consolidation. The Consolidation will consist of the merger of Transbeam with and into Global Capacity, whereupon the separate existence of Transbeam will cease and Global Capacity will be the surviving entity. Petitioners state that the Transaction will not result in an interruption or disruption of service because following the Consolidation, Global Capacity will become the service provider for Transbeam's customers. Petitioners state that the Consolidation will not result in any change to the services received by Transbeam's customers, including rates, terms and conditions of service pursuant to individual contracts that will be assumed by Global Capacity at completion of the Consolidation.

Petitioners note that all of Transbeam's customers are commercial entities receiving service under individually negotiated contracts and therefore would not be considered mass market service customers and the Petitioners do not believe that the Board's mass migration rules were intended to cover a change in provider for such customers, therefore Petitioners request a waiver of the Board's mass migration rules, see N.J.A.C. 14:10-12.1 et seq.

Additionally, the petition notes that given that Petitioners share the same management team, there will be no change in the managerial qualifications of the telecommunications provider serving the affected customers.

The New Jersey Division of Rate Counsel submitted comments by letter August 6, 2018, stating that it does not oppose the grant of Petitioners' requests contained in their Joint Verified Petition.

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 benefits obligations to any of its employees.

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 all of Petitioners' customers in New Jersey will continue to receive the same services at the same rates, through the same assets, provided by the same employees, and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners. In addition, the Board is persuaded that there will not be a material negative impact on employees.

The Board concludes that the provisions of N.J.A.C. 14:10-12.1 et seq. (mass migration rules) do not apply to this internal reorganization. Moreover, the proposed transactions will allow the Petitioners to streamline and rationalize their operations in a manner which will provide organizational and intra-corporate operational benefits. Further, the Board also concludes that the request for a waiver of the public notice requirements of N.J.A.C. 14:1-5.14(b)(12) is warranted in this occasion as the proposed transactions are internal and all customers will be notified of the mergers.

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, following the closing, Global Capacity is responsible for the filing of Transbeam's final annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to the Division of Rate Counsel. Following the closing and once all customers have been transferred, Transbeam shall surrender its authority to the Board. Global Capacity shall also submit tariff filings.

Accordingly, after careful review of this matter, the Board **FINDS** that the Transactions will not have a negative impact on the rates of current customers, or on employees. The Board also **FINDS** that the Transactions will have no negative 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 internal merger.

The Order is issued subject to the following provisions:

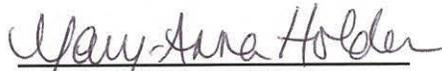
1. The Order is subject to Petitioners notifying the Board Secretary and the Office of Cable Television and Telecommunications, in writing, within five (5) days of the date of the closing of the proposed transaction.
2. Consummation of the above referenced transaction must take place no later than one-hundred-eighty (180) days from the date of this Order unless otherwise extended by the Board.
3. Global Capacity shall file within 45 days of the closing of the Transaction a revised tariff to incorporate or adopt the services and rates of the consolidating entities to the extent that such services and rates are different from those currently in the tariffs of Global Capacity.

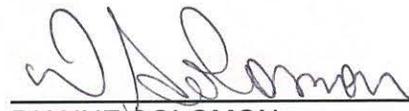
The effective date of this Order is September 8, 2018.

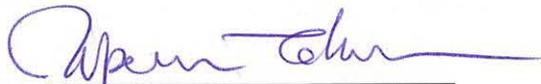
DATED: 8/29/18

BOARD OF PUBLIC UTILITIES
BY:

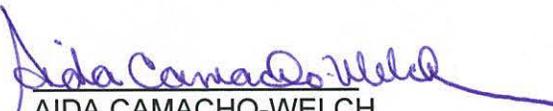


JOSEPH L. FIORDALISO
PRESIDENT

MARY-ANNA HOLDEN
COMMISSIONER

DIANNE SOLOMON
COMMISSIONER

UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST: 

AIDA CAMACHO-WELCH
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 VERIFIED JOINT PETITION OF TRANSBEAM, INC. AND GC PIVOTEL,
LLC D/B/A GLOBAL CAPACITY FOR APPROVAL OF A PRO FORMA INTERNAL
CONSOLIDATION DOCKET NO. TM18070712**

SERVICE LIST

James H. Laskey, Esq.
Norris McLaughlin & Marcus, PA
400 Crossing Blvd, 8th Floor
Bridgewater, NJ 08807-5933
jlasky@nmmlaw.com

Russell M. Blau
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004-2541
russell.blau@morganlewis.com

Brett P. Ferenchak
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004-2541
brett.ferenchak@morganlewis.com

Stephany Fan
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004-2541
Stephany.fan@morganlewis.com

Tony Hansel
VP, Deputy General Counsel
GTT Communications
7900 Tysons One Place, Suite 1450
McLean, VA
Tony.Hansel@gtt.net

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

Geoffrey R. Gersten
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street – 2nd Floor
Post Office Box 45029
Newark, NJ 07101-45029
Geoffrey.gersten@law.njoag.gov

Maria Novas-Ruiz, Esq
Division of Rate Counsel
140 Front Street, 4th Floor
Trenton, NJ 08625
mnovas-ruiz@rpa.state.nj.us

Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350

Lawanda R. Gilbert, Director
Office of Cable Television and
Telecommunications
lawanda.gilbert@bpu.nj.gov

Rocco Della Serra
Office of Cable Television and
Telecommunications
rocco.della-serra@bpu.nj.gov

Carol Artale, Esq.
Deputy Chief Counsel
carol.artale@bpu.nj.gov