



Agenda Date: 12/18/18
Agenda Item: IVB

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 BCM ONE, INC.'S NOTIFICATION)
FOR A CHANGE IN STOCK OWNERSHIP RESULTING)
IN A TRANSFER OF CONTROL AND RELATED)
FINANCING)
ORDER
DOCKET NO. TM18101120

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Todd B. Lantor, Esq., Lukas, LaFuria, Gutierrez & Sachs, LLP, on behalf of Petitioners

BY THE BOARD:

On October 15, 2018, BCM One, Inc., ("BCM One" or the "Company"), and BCM One Group Holdings, Inc., ("Buyer") (collectively "Petitioners") submitted a notice to the New Jersey Board of Public Utilities ("Board") that detailed a proposed transfer of control of BCM One to Buyer. The notice stated that it was the understanding of the Company that no prior approval of the transaction was required. On October 31, 2018, Petitioners filed a supplemental request for approval to obtain debt financing. Following the transfer of control, BCM One will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

BACKGROUND

BCM One is a corporation organized under the laws of the State of New York with principal offices located in New York, New York. BCM One is currently owned by Francis X. Ahearn, John P. Cunningham and James J. Monaghan (the "Sellers"). BCM One, formerly known as McGraw Communications, Inc., was authorized to provide local exchange and interexchange telecommunications services. See Order, In the Matter of the Petition for an Order Authorizing McGraw Communications, Inc. to Provide Local Exchange and Interexchange Telecommunications Services Throughout New Jersey, Docket No. TE01050329 (June 10, 2002). BCM One currently has one employee in New Jersey.

BCM One Group Holdings, Inc., is majority owned by Thompson Street Capital Partners V, L.P. ("Thompson Street"), which is part of a St. Louis, Missouri-based privately held investment firm and a Delaware limited partnership. According to Petitioners, Thompson Street specializes in growth capital, recapitalization, management buyouts, and private investments in middle market companies. The privately held investment firm was founded in 2000 and has acquired more

than 100 companies and managed more than \$2.6 billion in equity. Thompson Street invests in companies to ensure that they are positioned for continued growth in their markets. The General Partner of Thompson Street is Thompson Street Capital V GP, L.P., a Delaware limited partnership.

On July 18, 2018, Thompson Street and the owners of BCM One signed a Letter of Intent ("LOI") for Thompson Street (together with its co-investors) to acquire BCM One. Pursuant to the LOI and understanding between the parties BCM One will be acquired by Buyer. The parties intend that Thompson Street will hold 70% of the equity and voting interests in the Buyer. The other 30% will be held separately and independently by a combination of the three current equity owners of BCM One, Francis X. Ahearn, John P. Cunningham and James J. Monaghan (who will each roll over a portion of their sale proceeds into equity in the holding company), certain lender co-investors, and other commercial partners who will co-invest alongside the seller rollover parties. None of these individual holders will have equity or voting shares of 10% or greater.

The petitioners state that Geoffrey Bloss, currently the Chief Operating Officer of BCM One, will become the new Chief Executive Officer of BCM One after the closing, but the Sellers will remain involved as investors and board members. Further, several of BCM One's current management team members (e.g., BCM One's Chief Operating Officer, Chief Financial Officer, General Counsel) will remain with the Company, continuing to direct day-to-day operations to ensure that BCM One's existing expertise in the telecommunications field and specific in-depth knowledge will guide the Company's decisions going forward. The Petitioners contend the transaction will bring together the full strength of BCM One's proven telecommunications capabilities and technical expertise with Thompson Street's management and financial expertise. The transaction will enable BCM One to achieve measurable growth at the same time as it develops improved operating efficiencies.

On October 31, 2018, BCM One, submitted a supplement to its earlier notice ("Joint Supplement"). The Joint Supplement was submitted on behalf of BCM One and Buyer pursuant to N.J.S.A. 48:3-9, for the purpose of petitioning the Board for approval and authority to obtain certain debt financing, as described in the Joint Supplement. Approval and authority was sought to obtain debt financing (both term and revolving debt) in the aggregate amount of up to \$105 million. The proceeds will be used to effect the acquisition of BCM and to facilitate the acquisition of other complementary entities engaged in business activities that are not regulated by the Board. After the loan proceeds are disbursed to Buyer and the acquisition of BCM is completed, BCM will become a co-borrower with respect to the debt financing along with the other complementary entities that would also become co-borrowers of the debt financing. The debt financing includes senior secured financing (consisting of a five-year term loan of up to \$48 million, a five-year revolving credit facility of up to \$5 million, and certain other incremental and other loans), all to be secured by (1) substantially all of the assets of Buyer and, upon the completion of the acquisition, BCM and the other complementary entities, and (2) upon the completion of the acquisition, a pledge by Buyer of its equity interests in BCM and the other complementary entities. The senior secured financing will accrue interest at a rate per annum up to the sum of a benchmark interest rate to be described in the senior secured financing documentation, plus 4.50%, plus, if applicable, default interest of 2.00%. The debt financing also includes a 5.5-year unsecured subordinated mezzanine term loan of up to \$16 million and certain other loans. The subordinated mezzanine term loan will accrue interest at a rate per annum equal to 11.0%, plus, if applicable, default interest of 2.00%.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated December 3, 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. Rate Counsel states Petitioners have provided information required under the statutes and Board regulations in support of its assertion that the merger and financing arrangements contemplated are not contrary to the public interest and will serve a beneficial purpose for New Jersey customers. Specifically, as a condition of approval, Rate Counsel urges that the Board require Petitioners to notify the Board and Rate Counsel and to provide an appropriate explanation in writing within a minimum of thirty days prior to effectuating an elimination of the New Jersey employee position and also to notify the Board and Rate Counsel, if the Petitioners' New Jersey employment grows, when employment reduction is greater than fifteen percent, throughout a three (3) year period following approval.

DISCUSSION, FINDINGS AND CONCLUSIONS

In considering a transfer of control request, the Board shall evaluate the impact of 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. Petitioners stated that the proposed transaction will not have any effect on the sole New Jersey employee's status. Further, BCM does not provide a pension plan to the employee but any other retirement benefits will be retained.

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 not impact 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 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. BCM One currently has one employee in New Jersey. Petitioners stated that the proposed transaction will not have any effect on that person's continuing status as an employee. Further, BCM does not provide a pension plan to the employee but any other retirement benefits will be retained. 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 change in the status of the sole New Jersey employee or in the pension benefits provided thereto.

As to the proposed financing arrangements, the Board **FINDS** that the proposed transaction will not have a negative impact on competition, the rates of current customers, or New Jersey

employees. Therefore, after investigation and consideration of the record and information submitted in this proceeding, the Board **FINDS** that the expanded financing arrangements are in accordance with the law and in the public interest, and **HEREBY AUTHORIZES** Petitioners to participate in financing arrangements up to an aggregate amount of \$105 million, and to take those actions necessary to effectuate such financing arrangements.

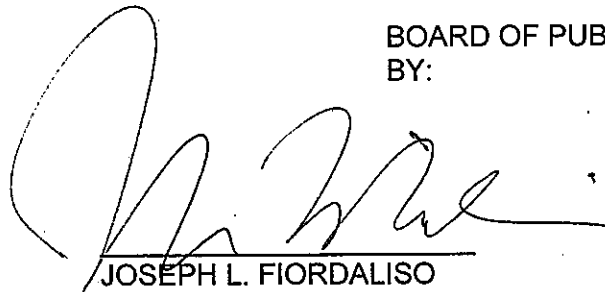
This Order is issued subject to the following provisions:

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. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting Petitioners.
3. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.

This Order shall be effective December 28, 2018.

DATED: 12/18/18

BOARD OF PUBLIC UTILITIES
BY:



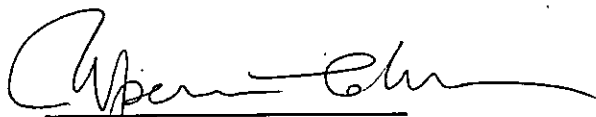
JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



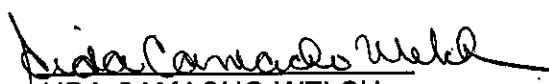
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF BCM ONE, INC.'S NOTIFICATION FOR A CHANGE IN STOCK
OWNERSHIP RESULTING IN A TRANSFER OF CONTROL AND RELATED FINANCING
DOCKET NO. TM18101120**

SERVICE LIST

Kenny Perkins, Sr.
RTC Associates, LLC
Consultant to BCM One
3075 Breckinridge Blvd., Suite 425
Duluth, Georgia 30096-4902
kperkins@rtcteam.net

Mark Korman Sidley Austin LLP
Counsel to Thompson Street
1501 K Street NW
Washington, DC 20005
mkorman@sidley.com

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

Patricia Krogman
Deputy Attorney General
Department of Law & Public Safety
Division of Law
Post Office Box 45029
Newark, NJ 07101-45029
patricia.krogman@law.njoag.gov

Lawanda R. Gilbert, Director
Rocco Della Serra
Office of Cable Television and
Telecommunications
Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350
Lawanada.gilbert@bpu.nj.gov
rocco.della-serra@bpu.nj.gov

Christine Lin, Administrative Analyst
Economist Office
Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350
Christine.lin@bpu.nj.gov

Carol Artale, Esq.
Deputy Chief Counsel
Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350
Carol.artale@bpu.nj.gov

Todd B. Lantor,
Lukas, LaFuria, Gutierrez & Sachs, LLP,
8300 Greensboro Drive, Suite 1200,
Tysons, VA 22102
tlantor@fcclaw.com