



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION) ORDER
OF EXTENET ASSET ENTITY, LLC, ASSIGNEE, AND)
EXTENET SYSTEMS, INC., ASSIGNOR, FOR)
APPROVAL FOR ASSIGNEE TO ACQUIRE CERTAIN)
CUSTOMERS AND ASSETS OF ASSIGNOR) DOCKET NO. TM19050648

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 23, 2019, ExteNet Asset Entity, LLC ("EAE") and ExteNet Systems, Inc. ("ESI") (collectively, "Petitioners"), submitted a Verified Joint Petition to the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:3-7 and the regulations of the Board requesting Board approval for EAE to acquire certain assets, including customer contracts and related telecommunications network infrastructure, of its indirect parent, ESI (the "Transaction"). Upon closing of the Transaction, EAE will become the service provider for those customers transferred and ESI will continue to operate under its existing Authority. Following closing, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to customers.

BACKGROUND

EAE is a newly formed Delaware limited liability company and direct, wholly owned subsidiary of ExteNet Issuer, LLC, which in turn is wholly owned by ExteNet Guarantor, LLC, which in turn is wholly owned by ESI. ESI is a privately held Delaware corporation and a direct, wholly owned subsidiary of Odyssey Acquisition, LLC ("Odyssey"), a Delaware limited liability company. Odyssey is an indirect, wholly owned subsidiary of Mount Royal Holdings, LLC ("Parent"), a Delaware limited liability company. Parent, which has executive offices located in Boca Raton, Florida has no majority owner; rather is owned by multiple private equity firms and certain individuals in management of ESI. ESI and its subsidiaries (collectively, "ExteNet") design, build, own and operate distributed networks for use by national and regional wireless service providers in North America. ExteNet also provides private lines or IP-based transport services

to other carrier customers. Collectively, ExteNet holds authorizations to provide intrastate telecommunications services in the District of Columbia and every state except Alaska, Iowa, Maine, Montana, North Dakota, Vermont, and Wyoming. In New Jersey, ESI (f/k/a Clearlinx) is authorized to provide local exchange and interexchange services. See, In the Matter of the Petition of Clearlinx Network Corporation for Approval to Provide Local Exchange and Interexchange Telecommunications Services within the State of New Jersey, Docket No. TE05121059 (order dated April 13, 2006). ExteNet has approximately 45 employees that reside or work in New Jersey. EAE recently filed for and received authority from the Board to provide resold and facilities-based local exchange telecommunications services in the State of New Jersey. See, In the Matter of the Petition of Extenet Asset Entity, LLC for Authorization to Provide Local Exchange and Interexchange Services in the State of New Jersey, Docket No. TE19020196 (order dated April 18, 2019). ExteNet does not have a pension plan; however, the Transaction will have no impact on the retirement benefit plan(s) that are currently offered to those employees.

DISCUSSION

According to the petition, the Transaction is part of a plan to expand the ExteNet family of authorized operating companies to better align their businesses with current and future customer focus and growth and to obtain additional debt financing. As a result of the Transaction, certain contracts and related network assets will be assigned by ESI to EAE, including ESI's customer accounts and contracts, antennas, fiber, and other telecommunications equipment. Following this intra-corporate Transaction, the petition states that EAE will primarily provide service and networks targeted to wireless service providers. ESI will continue to operate under its existing certificate and will continue to develop, sell, and construct new distributed networks, along with providing "lit" fiber services to commercial users and new services.

By letter dated August 12, 2019 the petitioners submitted a letter requesting a waiver of the Board's mass migration rules, see N.J.A.C. 14:10-12.1 et seq. In the letter, Petitioners state that it would be unduly burdensome, unnecessary and potentially confusing to customers for EAE to comply with the Board's mass migration rules without modification or waiver because, from its customers' point of view, the Transaction will result in a change in the name of their provider rather than a discontinuance or other change in their services. Petitioners note in the letter that the name change itself will not have any negative impact upon customers, as both the assignor and the assignee utilize the "ExteNet" brand. Customers will be provided notice of the transfer to EAE.

Petitioners submit that the proposed Transaction is in the public interest. The Transaction will result in the assignment of certain ESI customers and assets to an affiliated company that will continue to provide telecommunications services to such assigned customers without interruption. Following grant of requested authority, EAE will offer services at the same rates and on the same terms and conditions as previously provided by ESI (subject to future changes pursuant to applicable law and contract provisions). Given that EAE and ESI share the same management team, EAE's customers will benefit from that same team's knowledge and experience in the New Jersey market. Furthermore, Petitioners have asserted that in accordance with the terms of their service contracts, ESI will notify its customers of the proposed Transaction and the change in such customer's telecommunications provider from ESI to ESE.

The proposed Transaction also will not adversely affect competition because it will not result in any reduction in the number of competitors serving the market.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated August 26, 2019, stating it does not oppose approval of the proposed Petitioners' requests in this matter provided conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. 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 greater than 15% of the New Jersey employees' positions throughout a three (3) year period following approval of the Transaction. With regard to the waiver request, the letter states that Rate Counsel defers to the Board's determination as to the applicability of its mass migration rules to the customers affected under the transfer/consolidation Transaction contemplated herein.

FINDINGS AND CONCLUSIONS

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. The Board also concludes that Petitioners have shown good cause in supporting a waiver of the Board's Mass Migration Rules. The Board agrees in this instance, wherein the change in provider for customers is the result of an intra-company reorganization, and from the customers point of view, will simply result in a change in the name of their provider, a waiver of the Mass Migration Rules is supported. Further, customers will be provided advance notice of the transfer to EAE.

Furthermore, all of the customers in question are wireless service provider carriers receiving service under individually negotiated contracts who will continue to receive service at the same rates, terms and conditions. Again, the Transaction will be transparent to customers and will not entail a discontinuance of service. While the consideration of waivers is fact-sensitive, it is also worth noting that the Board has granted waiver requests such as these in the past. Customers here will not be prejudiced and will not suffer detrimental impact by the requested waiver. The Board therefore **FINDS** good cause supporting the waiver and **HEREBY GRANTS** the waiver requested, for the reasons set forth in Petitioners' filings and as set forth above.

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. ExteNet currently has approximately 45 employees in New Jersey. 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 I/M/O the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (order dated 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 following 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.

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 Petitioners 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

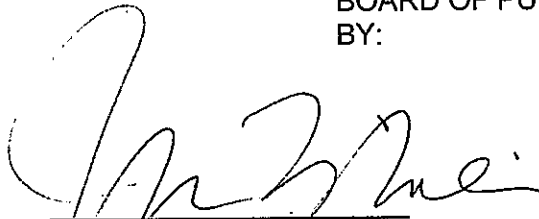
provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions and the provision of service quality on competitive offerings is in the public interest. The Board notes that the Petitioners have represented that the Transaction will not affect the number or the identity of the employees or management of ExteNet, or their respective pensions or other benefits.

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 October 7, 2019.

DATED: 9/27/19

BOARD OF PUBLIC UTILITIES
BY:



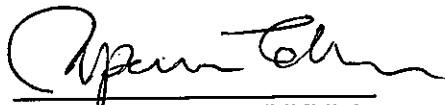
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PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



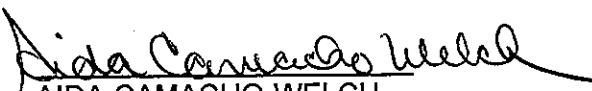
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UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
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.

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