



Agenda Date: 12/06/19
Agenda Item: IVA

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

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT) ORDER
PETITION OF SERVICE ELECTRIC CABLE T.V.,)
INC. AND SERVICE ELECTRIC TELEPHONE)
COMPANY, LLC AND IRONTON TELEPHONE)
COMPANY FOR APPROVAL FOR THE)
TRANSFER OF CONTROL OF SERVICE)
ELECTRIC TELEPHONE COMPANY, LLC) DOCKET NO. TM18111249

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
Michael P. Donahue, Esq., of Marshlian & Donahue, PLLC, on behalf of Petitioners

BY THE BOARD:

On November 27, 2018, Service Electric Cable T.V., Inc. ("SECTV"), Service Electric Telephone Company, LLC ("SET"), and Ironton Telephone Company ("ITC") (collectively "Petitioners") filed a petition pursuant to N.J.S.A. 48:2-51.1 and N.J.S.A. 48:3-10, with the Board of Public Utilities ("Board") requesting approval for SECTV to acquire assets, primarily a portion of SET's customer base, (predominantly business customers) from SET and for ITC to acquire complete ownership of SET through a Redemption and Sale Agreement ("Agreement") among the Petitioners (the "Proposed Transaction"). All SET customers are currently served by Voice over Internet Protocol (VoIP).

BACKGROUND

SECTV is a Pennsylvania corporation with principal business offices located in Bethlehem Pennsylvania. The petition states that SECTV provides business and residential cable, internet, data and voice service in Pennsylvania. SECTV also offers bundled cable, internet, data and voice service offerings in Pennsylvania. SECTV is not an authorized CLEC provider in New Jersey.

SET is a Pennsylvania limited liability company with principal business offices located in Coplay, Pennsylvania. SET was formed as a joint venture between SECTV and ITC with each company holding a fifty percent (50%) ownership interest in SET. The petition states that SET provides local exchange and interexchange telephone services to customers in Pennsylvania and New Jersey using SECTV's fiber and coax facilities. In the past, SET has provided phone service using switched dial tone service from ITC. However, the petitioners state that it now relies on VoIP technology to provide voice service to its business and residential customers. SET states that no customers are currently served by switched dial tone.

SET is authorized to provide local exchange and interexchange telecommunications services in New Jersey. See Order, In the Matter of the Petition of Service Electric Telephone Company, LLC for Authority to Provide Local Exchange Telecommunications Services within the State of New Jersey, Docket No. TE05110972, (June 16, 2008). SET has zero employees in New Jersey.

ITC is a Pennsylvania corporation with principal business offices located in Coplay, Pennsylvania. According to the petition, ITC provides a variety of business and residential voice services, including local exchange, interexchange, and VoIP services. ITC is authorized to provide local exchange services in Pennsylvania and is also registered to provide interstate telecommunications services with the Federal Communications Commission.

The petition states that pursuant to the Agreement executed among SECTV, SET and ITC, SECTV will pay SET cash consideration for 50% of SET's customer base (subject to a small number of retained customers pursuant to the Agreement) along with certain customer contracts, documents, and records. SET will redeem SECTV's ownership interest in SET in exchange for the remaining 50% of the SECTV customer base, leaving SECTV with no ownership interest in SET and transferring all customers to SECTV. Petitioners state that as a result, SECTV will acquire 100% of SET's customer base with the exception of any customers that choose to transfer to another provider. As a result of the agreement, ITC will obtain complete control over SET. SET will survive the Proposed Transaction as a wholly-owned subsidiary of ITC. Further, SET will retain their CLEC operating authority in New Jersey.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated June 13, 2019 stating it does not oppose approval of joint Petitioners' requests and states that it would not object should the Board decide to treat Petitioner's filing as a waiver request (without the need of an amended filing) of the Board's Mass Migration rules, should the Board deem it appropriate and warranted under the fact sensitive circumstances in this matter and accordingly does not object to relaxation, modification and/or waiver of the Board's mass migration rules, or a decision by the Board to grant Petitioner's requests with a condition that customers not be migrated to SECTV until SECTV has been granted CLEC Authority by the Board.

By letter dated September 3, 2019 Petitioners responded to Rate Counsel's recommendations. With respect to the Mass Migration rules, Petitioners state that to the extent that the Board determines that a waiver of the Board's Mass Migration rules is required, SECTV requests that the Board treat said letter as a request for waiver. The letter also states that SECTV is willing to obtain CLEC authority in New Jersey if required by the Board, however, SECTV does not believe that CLEC authority is required to transfer VoIP customers or that obtaining CLEC authority should be a condition of approval of the transfer. The letter states that the customers being acquired by SECTV are currently VoIP service customers and that New Jersey Law limits

the authority of the Board to regulate directly or indirectly the rates, terms and conditions of service of these customers which are outside the authority of the Board.

DISCUSSION, FINDINGS AND CONCLUSIONS

In considering a transfer of control request, the Board shall evaluate the impact of the 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 SET does not have any employees in New Jersey.

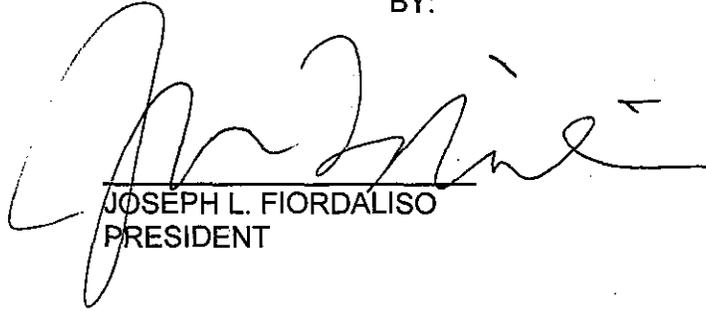
As for the request for a waiver of the Board's Mass Migration rules, the Board **FINDS** that the customers that are being transferred are VoIP customers not regulated by the Board. See N.J.S.A. 48:17-35. Therefore the Mass Migration rules do not apply. The Board does note that Petitioners have stated that SECTV has committed to continue to provide service to any transferred customers under the same rates, terms and conditions as they currently receive under their SET contracts.

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 transfer of control of SET to ITC is in the public interest and 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. Therefore, after investigation, having reviewed the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transfer of control.

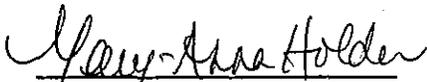
This Order shall be effective December 16, 2019.

DATED: 12/6/19

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



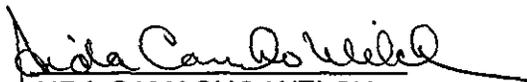
DIANNE SOLOMON
COMMISSIONER



UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
SECRETARY

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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INC. AND SERVICE ELECTRIC TELEPHONE COMPANY, LLC AND IRONTON TELEPHONE
COMPANY FOR APPROVAL FOR THE TRANSFER OF CONTROL OF SERVICE ELECTRIC
TELEPHONE COMPANY, LLC
DOCKET NO. TM18111249

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