



Agenda Date: 1/10/24
Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE
TELEVISION AND
TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION) ORDER
OF EXTENET ASSET ENTITY, LLC AND EXTENET)
SYSTEMS, LLC FOR APPROVAL TO TRANSFER)
CERTAIN ASSETS BETWEEN PETITIONERS AND A)
WAIVER OF MASS MIGRATION RULES) DOCKET NO. TM23070449

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Dennis Linken and Stan Barrett, Esqs., Scarinci Hollenbeck, on behalf of the Petitioners

BY THE BOARD: ¹

On July 17, 2023, ExteNet Asset Entity, LLC (“EAE”) and ExteNet Systems, LLC (“ESL”) (collectively, “Petitioners”), submitted a verified joint petition requesting approval from the New Jersey Board of Public Utilities (“Board”) to transfer certain assets, customer contracts and related telecommunications network infrastructure between Petitioners (“Transaction”), pursuant to N.J.S.A. 48:3-7 (“Petition”). The Transaction is in connection with certain financing arrangements for which EAE has existing authority from the Board.² Additionally, the Petitioners requested a waiver of the Board’s mass migration rules, N.J.A.C. 14:10-12.1 *et seq.*, to the extent applicable to the transfer of customer contracts between Petitioners.

¹ Commissioner Michael Bange abstained from voting on this matter.

² EAE is authorized to enter into, or to participate in, financing arrangements in an aggregate amount of up to \$780 million, with flexibility within that aggregate amount to negotiate particular market-based terms within the range described in its Petition. See In re the Verified Joint Petition of ExteNet Asset Entity, LLC, Assignee and ExteNet Systems, Inc., Assignor, for Approval for ExteNet Asset Entity, LLC, to Participate in Certain Financing Arrangements, BPU Docket No. TF19050649, Order dated August 18, 2021. Petitioners represent that ESL will not participate in the financing arrangements associated with the Transaction.

BACKGROUND

EAE is a Delaware limited liability company authorized to provide local exchange and interexchange service in New Jersey.³ EAE is a 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 ESL.

ESL is a privately held Delaware limited liability company and holds authorization from the Federal Communications Commission to provide domestic (interstate) telecommunications services and authorized to provide local exchange and interexchange services in New Jersey.⁴ ESL is 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”).

Parent is a Delaware limited liability company with executive offices located at 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida 33487. Parent has no majority owner, but rather is owned by multiple private equity firms, an insurance company, and certain individuals in management of ESL.⁵

ESL and its subsidiaries; EAE, ExteNet Issuer, LLC, ExteNet Guarantor, LLC, (collectively, “Extenet”), hold authorizations to provide intrastate telecommunications services in the District of Columbia and every state except Alaska, Iowa, Maine, Montana, North Dakota, Vermont, West Virginia, and Wyoming. Extenet primarily designs, builds, owns and operates distributed networks for use by national and regional wireless service providers (“WSPs”) in North America. Extenet deploys distributed networks to improve coverage and capacity and enable wireless service in both outdoor and indoor environments using fiber-fed distributed antenna systems, small cells, Wi-Fi and other technologies. Extenet’s primary markets include outdoor distributed networks in a variety of densely occupied or heavily traveled settings, and venues used for sports and entertainment events, the hospitality industry, commercial buildings, and healthcare facilities. Extenet also provides private lines or IP-based transport services to other communications providers and enterprise customers.

The Petitioners stated that the Transaction is *pro forma* as it is between affiliates, and is part of Extenet’s plan to obtain additional debt financing to accommodate customer growth. The Transaction will distribute assets between the entities participating in certain financing arrangements, including those participating in the additional debt financing, and those that are not. According to the Petition, the Transaction will result in certain contracts and related network assets being assigned between Petitioners, including customer accounts and contracts, fiber, and telecommunications equipment. The Petitioners stated that assets may be assigned from EAE to ESL in order to align and consolidate assets under similar geographical boundaries, as well as

³ In re the Petition of ExteNet Asset Entity, LLC for Authorization to Provide Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, BPU Docket No. TE19020196, Order dated April 18, 2019.

⁴ In re the Petition of ClearLinx Networks Corporation for Approval to Provide Local Exchange and Interexchange Telecommunications Services within the State of New Jersey, BPU Docket No. TE05121059, Order dated April 13, 2006.

⁵ Additional information regarding the ownership of Parent was provided in Docket No. TM15080862 and TM16030187 and is incorporated by reference.

to remove a portion of contracts expected to terminate prior to the maturity of the new debt expected to be issued under the financing arrangements. The Petitioners asserted that the business of each Petitioner will remain the same, post Transaction. The Petitioners contended that EAE will continue to provide service and networks targeted to WSPs and ESL will continue to develop, sell, and construct new distributed networks, along with providing “lit” services to commercial users and new services.

The Petitioners asserted that to ensure seamless and uninterrupted service, all of the customers assigned to EAE will continue to receive service from EAE under the same rates, terms and conditions of services as governed by their existing contracts with ESL. EAE will offer point-to-point telecommunications services to WSPs, other telecommunications carriers and communications providers. Conversely, all of the customers assigned to ESL will also continue to receive service from ESL under the same rates, terms and conditions of services as governed by their existing contracts with EAE. The Petitioners asserted that future changes in the rates, terms and conditions of service to the affected customers will be undertaken pursuant to customer contracts and the applicable federal and state notice and tariff requirements. The Petitioners affirm that the Transaction will not cause confusion or disruption to customers since EAE and ESL will market and perform their respective services under the “Extenet” brand with which customers are familiar. The Petitioners asserted that they will provide existing customers with the same rates and terms of service, and will operate through the same customer service, technical, operational and managerial personnel, who shall remain employed by ESL.

The Petitioners stated that EAE’s and ESL’s customers in New Jersey are sophisticated carriers or commercial entities that receive service under individually negotiated contracts and therefore would not be considered mass-market service customers. The Petitioners do not believe that the Board’s mass migration rules were intended to cover a change in the provider for such customers, especially under the circumstances presented where the change in provider will occur as part of a pro forma Transaction, pursuant to which terms of service, rates, and the brand under which services are provided remain the same. Consequently, the Petitioners requested, to the extent required, a waiver of the Board’s mass migration rules at N.J.A.C. 14:10-12.1 et seq. The Petitioners stated that it would be unduly burdensome, unnecessary, and potentially confusing to customers for Petitioners to comply with the Board’s mass migration rules without modification or waiver. The Petitioners stated that, from their customers’ point of view, the Transaction would simply result in a change in the legal name of their provider rather than a discontinuance or other change in their services.

The Petitioners asserted that the proposed Transaction serves the public interest as an integral part of the financing arrangements, which the Board found were in the public interest.⁶ Given that EAE and ESL share the same management team, customers will continue to benefit from that team’s knowledge and experience in the New Jersey market. The Petitioners stated that EAE and ESL offer customers a wide array of services, thus providing New Jersey consumers greater choice for telecommunications services, customer service, and competitive prices. The Petitioners also noted that EAE and ESL operate their respective networks and offer services designed to meet the individual needs of WSP customers in providing high quality services to their end-user customers in an efficient and cost-effective manner. According to the Petitioners,

⁶ In re the Verified Petition of ExteNet Systems, Inc. for Approval to Expand its Authority to Participate In Financing Arrangements, BPU Docket No. TF17091000, Order Dated November 21, 2017; In re the Verified Joint Petition of ExteNet Asset Entity, LLC, Assignee and ExteNet Systems, Inc., Assignor, for Approval for ExteNet Asset Entity, LLC, to Participate in Certain Financing Arrangements, BPU Docket No. TF19050649, Order Dated August 18, 2021.

the affected customers are sophisticated communications carriers and enterprise customers that negotiate individual contracts that typically include terms associated with the assignment of the contract to other entities. The Petitioners affirmed that their customers will be notified of the proposed Transaction and the change in customer's telecommunications providers from ESL to EAE, or EAE to ESL, as applicable in accordance with the terms of their service contracts.

On December 1, 2023, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments, which were subsequently updated, stating that it did not oppose approval of the proposed Transaction provided that conditions are imposed to ensure continued service quality in connection with potential future employment attrition in New Jersey. Rate Counsel recommended that the Board require Petitioners to comply with federal customer notice requirements, provide a written explanation from Petitioners regarding the decrease in New Jersey employees from 2019 to 2023, and impose a new three-year notification requirement in which the Company must provide notice of any changes in employment starting from the date of the Order in this matter. With regard to the waiver request, Rate Counsel deferred to the Board's determination as to the applicability of its mass migration rules to the customers affected under the Transaction.

DISCUSSION AND FINDINGS

Pursuant to N.J.S.A. 48:3-7, a utility shall not, among other things, dispose of its property or consolidate its property with that of any other public utility without the approval of the Board. Where the disposition of all of, or a substantial portion of, a utility's property is proposed, the Board shall not approve the proposed transaction if it appears that the public utility or a wholly owned subsidiary thereof may be unable to fulfill its pension obligations to its employees. N.J.S.A. 48:3-7.

Here, the Transaction contemplates a transfer of assets, including customer contracts and related telecommunications network infrastructure, between two (2) regulated utilities, EAE and ESL, in connection with financing arrangements previously approved by the Board. The Board, having reviewed the Petition and the entire record, **HEREBY FINDS** that the proposed Transaction is consistent with the public interest and in accordance with the law. The Board **FURTHER FINDS** that the Transaction will not adversely impact the Petitioners' employees and/or pension obligations.

As to the request for a waiver of the mass migration rules at N.J.A.C. 14:10-12.1 *et seq.*, the Board **HEREBY FINDS** that Petitioners have demonstrated good cause for the waiver pursuant to N.J.A.C. 14:1-1.2. Petitioners serve commercial entities who will remain customers post-closing of the pro forma transaction in accordance with the terms of their customer service agreements, and who will be advised of the pro forma transaction. Further, ownership, control and management policies will remain the same following the Transaction. For these reasons, Petitioners' request for a waiver of N.J.A.C. 14:10-12.1 *et seq.* is **HEREBY GRANTED**.

Accordingly, the Board **FINDS** that the proposed Transaction is consistent with applicable law and is not contrary to the public interest. Therefore, after investigation, having considered the record and exhibits submitted in this proceeding, the Board **HEREBY AUTHORIZES** Petitioners to complete the Transaction.

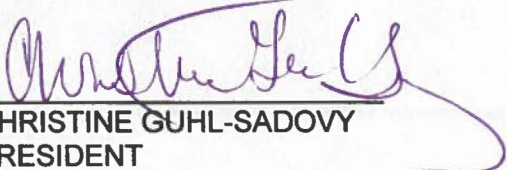
This Order is issued subject to the following provisions:

1. The Petitioners will submit to Board Staff and Rate Counsel written explanation regarding the decrease in New Jersey employees from 2019 to 2023 within 10 days from the effective date of this Order.
2. The Petitioners will be required to notify the Board of any reduction in employment of 15% or more within a 3-year period after the date of closing.

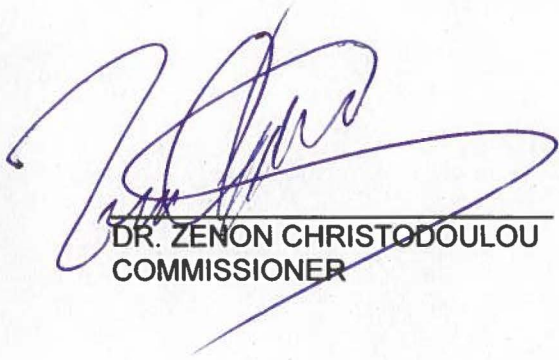
This Order shall be effective on January 17, 2024.

DATED: January 10, 2024

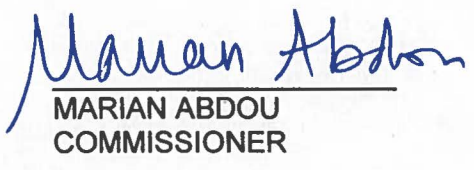
BOARD OF PUBLIC UTILITIES
BY:



CHRISTINE GUHL-SADOVY
PRESIDENT




DR. ZENON CHRISTODOULOU
COMMISSIONER



MARIAN ABDOU
COMMISSIONER

ATTEST:



SHERRI L. GOLDEN
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 THE VERIFIED JOINT PETITION OF EXTENET ASSET ENTITY, LLC AND EXTENET SYSTEMS, LLC FOR APPROVAL TO TRANSFER CERTAIN ASSETS BETWEEN PETITIONERS AND A WAIVER OF MASS MIGRATION RULES –
DOCKET NO. TM23070449

SERVICE LIST

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