



Agenda Date: 4/17/24
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)
OF AP VIII OLYMPUS VOTECO, LLC, TRANSFEROR)
AND 46 LABS LLC, TRANSFEREE FOR APPROVAL TO)
TRANSFER ULTIMATE CONTROL OF INTRADO)
COMMUNICATIONS, LLC, LICENSEE)
ORDER
DOCKET NO. TM23100782

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Daniel Howard, Esq., Chief Legal Officer, on behalf of 46 Labs LLC
Rachel Wolkowitz, Esq., Wilkinson Barker Knauer, LLP, on behalf of AP VIII Olympus VoteCo LLC and Intrado Communications LLC

BY THE BOARD:

On October 31, 2023, AP VIII Olympus VoteCo, LLC (“Olympus” or “Transferor”), together with Olympus’ indirect subsidiary, Intrado Communications LLC (“Intrado” or “Licensee”), and 46 Labs LLC (“46 Labs” or “Transferee”, collectively with Transferor and Licensee, the “Joint Petitioners”), submitted a Verified Joint Petition to the New Jersey Board of Public Utilities (“Board”) (“Petition”). The Joint Petitioners requested Board approval to consummate a transaction resulting in the transfer of control of the Licensee from the Transferor to the Transferee (“Transaction”), pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7, and N.J.S.A. 48:3-10. The Joint Petitioners informed the Board that the Licensee changed its name to Hypercube Networks, LLC with the New Jersey Secretary of State. Consistent with the name-change notice, the Joint Petitioners requested that any Board grant of the Joint Petition be in the name of Hypercube Networks, LLC f/k/a Intrado Communications LLC.¹

¹ Because the Board’s records list the Licensee as Intrado Communications, LLC, at the time of application the Joint Petitioners referred to the Licensee as Intrado Communications, LLC.

BACKGROUND

Transferor, a special purpose Delaware limited liability company located at 9 West 57th Street, 43rd floor New York, NY 10019, indirectly controls the Licensee.² Matthew Nord and Robert Kalsow-Ramos, both U.S. citizens and investment professionals with the Apollo funds group, each currently hold 45.05 percent of the voting membership interests and 45.05 percent of the equity interests in the Transferor. Apollo, founded in 1990, is a global alternative investment manager that raises, invests, and manages investment funds on behalf of pension and endowment funds as well as other institutional and individual investors.

The Licensee, a Delaware limited liability company located at 3200 W. Pleasant Run Road, Suite 300 Lancaster, Texas 75146, is a wholly owned direct subsidiary of Intrado Communications Holdings, LLC. The Licensee provides wholesale local and national tandem switching and transport services, termination services, toll-free origination services, and Direct Inbound Dial services to telecommunications and information service providers, including wireless carriers, wireline competitive local exchange carriers (“CLEC”), and interexchange carriers (“IXC”); cable telephony providers; and Voice over Internet Protocol (“VoIP”) providers. The Licensee provides service using its optical backbone network that is both IP- and TDM-based. The Licensee owns and operates its own network equipment; however, it leases transmission lines (including access circuits) from other carriers. The Licensee’s services are currently available in 48 states and the District of Columbia.³ The Licensee’s predecessor, KMC Data LLC, was granted authority by the Board to provide resold and facilities-based local exchange and interexchange services throughout New Jersey on October 23, 2003.⁴

The Transferee is an Oklahoma limited liability company located at 1503 E. 19th Street, Edmond, Oklahoma 73013. At the time of closing, Trevor Francis, who is the Chief Executive Officer and Founder of the Transferee will directly own approximately 63.4 percent of the Transferee. Daniel Howard, Chief Legal Officer of Transferee, will indirectly own approximately 32.3 percent of the Transferee through VPH Investments LTD, LLC, an Oklahoma limited liability company. Both Francis and Howard are U.S. citizens. The Transferee and/or its affiliates provide voice, data, and messaging services to organizations in the healthcare, finance, retail, transportation, manufacturing, government, and education sectors.

² All of the voting interests in Hypercube Networks LLC are indirectly held by Olympus through Olympus’ direct 100 percent voting control of Intrado’s direct parent company, Intrado Communication Holdings, LLC. All of the equity interests in Intrado are indirectly owned by Mount Olympus Parent, L.P. (“Mount Olympus”) through Mount Olympus’ direct 100 percent equity interest in Intrado Holdings.

³ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

⁴ In re the Petition of KMC Data LLC for Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, BPU Docket No. TE01100637, Order Dated October 23, 2023.

The Licensee changed its name with the Delaware Secretary of State from Intrado Communications, LLC, to Hypercube Networks, LLC.⁵ The Licensee has submitted a name change notification to the New Jersey Secretary of State in connection with the Licensee's foreign corporation registration that permits the Licensee to operate in New Jersey. The Licensee has submitted notice to its customers in New Jersey of the name change and submitted a revised New Jersey tariff to the Board to reflect this name change.⁶ Further, the Petition included an affidavit by the Licensee in connection with the name change, as required by the Board. In light of the foregoing, and consistent with the filing request, the Joint Petitioners requested that the Board change the Licensee's name from Intrado Communications, LLC to Hypercube Networks, LLC such that Hypercube Networks, LLC will be the name of the Licensee should the Board approve the Transaction.

On June 19, 2023, the Transferee and West Technology Group, LLC ("West"), which is indirectly controlled by the Transferor, entered into a Membership Interest Purchase Agreement ("Agreement").⁷ Pursuant to the Agreement, West agreed to sell to the Transferee, and the Transferee agreed to acquire, all of the issued and outstanding membership interests of Intrado Communications Holdings, LLC including its wholly owned subsidiary the Licensee. The proposed Transaction will occur at the parent level and will only result in a change in the ownership of Licensee. No assignment of licenses, assets, or customers will occur as a consequence of the Transaction.

The Joint Petitioners asserted that consummation of the Transaction would serve the public interest by providing the Licensee with new sources of capital and the managerial resources and industry expertise of the Transferee, which will in turn enhance the Licensee's ability to offer its services and compete in the telecommunications marketplace. The Joint Petitioners contended that the Transaction would provide the Licensee with access to financial and other resources that will allow it to become a more effective competitor and strengthen its service offerings, to the benefit of the market and customers. The Joint Petitioners stated that the Transaction would not result in any harm to public interest and that the Licensee will continue to provide competitive service to existing customers at the same rates, terms, and conditions and in the same geographic areas as currently provided. The Joint Petitioners argued that, accordingly, the Transaction would be transparent to customers and will not result in the discontinuance, reduction, loss, or impairment of service to any customer.

On December 21, 2023, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments on the Petition. Rate Counsel stated that it supports the contemplated continued provision of innovative, high-quality telecommunications services to the public in the New Jersey telecommunications market for the benefit of both residential and business customers. Accordingly, Rate Counsel indicated that it did not oppose a Board grant of Joint Petitioners' requests under the Verified Petition. However, Rate Counsel noted that there is no guarantee in the petition that Joint Petitioners will be able to fulfill their obligations with respect to employee pension benefits, if any exist in New Jersey, as required under N.J.S.A. 48:3-10. In response,

⁵ Documentation on the Change of Corporate Name on File with the New Jersey Secretary of State, Order No. 939068-130, Order Dated August 15, 2023.

⁶ In re the Notice of Corporate Name Change and Petition for Approval of a Revised New Jersey Tariff No. 2 of Intrado Communications, LLC, License, BPU Docket No. TT24010013, Dated January 5, 2024.

⁷ West assigned its obligation to sell Intrado under the Agreement to its parent company, Olympus, which holds indirect voting control of Intrado. Consequently, although the Agreement was executed between West and 46 Labs, Olympus, rather than West, will be the Transferor of Intrado to 46 Labs.

Board Staff submitted discovery to the Joint Petitioners, requesting information pertaining to their obligations to employees in New Jersey. In response to the request, the Joint Petitioners stated that the Licensee has no direct employees in New Jersey.

DISCUSSION

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 benefit 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.

FINDINGS

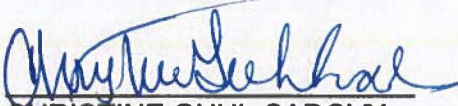
After investigation, and having considered the record in this proceeding, the Board **FINDS** that the proposed Transaction is consistent with applicable law and is not contrary to the public interest. The Board also **FINDS** that the Transaction will have no material adverse impact on the provision of safe, adequate and proper service, and is likely to provide benefits to customers. The Board also **FINDS** that the Transaction will have no material impact on the Licensee's employees, or their pensions. The Board further **FINDS** that the Transaction will have no material adverse impact on competition. Therefore, the Board **HEREBY AUTHORIZES** Joint Petitioners to complete the proposed Transaction.


The Board also **FINDS** that, in accordance with N.J.S.A. 48:2-59 and 48:2-60, following consummation of the Transaction, the Licensee is responsible for the filing of its annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to Rate Counsel.

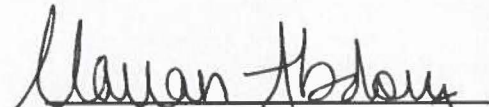
This Order shall be effective on April 24, 2024:

DATED: April 17, 2024

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARIAN ABDOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST: 
SHERRIL 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 AP VIII OLYMPUS VOTECO, LLC,
TRANSFEROR AND 46 LABS LLC, TRANSFEREE FOR APPROVAL TO TRANSFER
ULTIMATE CONTROL OF INTRADO COMMUNICATIONS, LLC, LICENSEE

DOCKET NO. TM23100782

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