



Agenda Date: 6/18/14
Agenda Item: IVB

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)
OF BIRCH COMMUNICATIONS, INC. AND CBeyond)
COMMUNICATIONS, LLC FOR APPROVAL OF)
FINANCING ARRANGEMENTS AND TRANSFER OF)
CONTROL OF CBeyond COMMUNICATIONS, LLC) ORDER
DOCKET NO. TF14040376

Parties of Record:

Angela F. Collins, Esq., Cahill Gordon & Reindel LLP, for Birch Communications, Inc.
William Weber, Esq., General Counsel, for Cbeyond Communications, LLC
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On April 22, 2014, Cbeyond Communications, LLC ("Cbeyond") and Birch Communications, Inc. ("BCI") (Cbeyond and BCI collectively, the "Petitioners") requested Board approval, pursuant to N.J.S.A. §§ 48:3-7, 48:3-9, and 48:3-10, of a transaction that will result in the transfer of control of Cbeyond to BCI, as well as approval to participate in a financing arrangement. Following the proposed transfer of control and financing arrangement, Petitioners will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

Cbeyond is a Delaware limited liability company with principal offices located at 320 Interstate North Parkway SE, Suite 300, Atlanta, GA 30339. Cbeyond was authorized by the Board to provide telecommunications service in New Jersey on August 8, 2008. See Order, In the Matter of the Petition of Cbeyond Communications, LLC for Authority to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE08030144. Cbeyond, Inc. is the parent company of Cbeyond.

BCI is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. BCI was granted authority to provide local exchange and interexchange telecommunications services in New Jersey on July 1, 2009, See Order, I/M/O Birch Communications Inc., Petition for Authority to Provide Local Interexchange Telecommunication Services within the State of New Jersey, Docket No. TE09040307.

Neither Cbeyond nor BCI has any employees in New Jersey.

According to the Petition, pursuant to the terms of an Agreement and Plan of Merger dated April 19, 2014, by and among Cbeyond, Inc., BCI, and Hawks Merger Sub, Hawks Merger Sub will merge with and into Cbeyond, Inc., with Cbeyond, Inc. as the surviving corporation. As a result of the merger, the separate corporate existence of Hawks Merger Sub will cease, and Cbeyond, Inc. will continue its existence as a wholly owned subsidiary of BCI. BCI will directly own 100% of the stock of Cbeyond, Inc. and indirectly own 100% of the membership interests of Cbeyond.

Petitioners state that the transfer of control transaction does not involve the assignment of either Cbeyond's or BCI's telecommunications authorizations or its customers. Customers of BCI will continue to be served by BCI pursuant to its existing authorization. Customers of Cbeyond will continue to be served by Cbeyond pursuant to its existing authorization. Customers of Cbeyond will continue to receive their existing services at the same or similar rates, terms and conditions without any immediate changes. The proposed transaction will be transparent to the customers of Cbeyond. Cbeyond's existing customers will continue to receive service under the "Cbeyond" name as a result of the proposed transaction, and all billing and correspondence will reflect the "Cbeyond" name.

Petitioners assert that approval of the proposed transfer of control transaction serves the public interest. The proposed transfer of control will ensure that affected customers maintain continuity of telecommunications service. Following the transfer, the affected customers will continue to receive services consistent with the quality of services currently provided by Cbeyond and also will be supported by BCI's management.

The Petitioners also seek approval to participate in a financing arrangement. Specifically, BCI and Cbeyond (in its future capacity as a subsidiary of BCI) seek approval to enter into a new financing arrangement with PNC Bank, National Association ("PNC") for PNC to act as the sole administrative agent for BCI to obtain senior secured credit facilities ("Senior Credit Facilities") from various financial institutions. The Senior Credit Facilities include a revolving credit facility, a term loan facility, and an accordion provision. The per annum interest rate applicable to the Senior Credit Facilities is expected to be consistent with market conditions for similar financing transactions as of closing. BCI intends to use a portion of the proceeds of the Senior Credit Facilities to pay-off its existing financing arrangements with Bank of America, which were previously approved by the Board. The remaining portion of the Senior Credit Facilities will be used by BCI for its acquisition of Cbeyond and for other lawful corporate purposes. The Senior Credit Facilities will be secured by first priority lien on the stock and substantially all of the assets of BCI, BCI's parent (Birch Communications Holdings, Inc.), and BCI's directly and indirectly owned subsidiaries, including Cbeyond. All of BCI's subsidiaries, including Cbeyond, will act as guarantors under the Senior Credit Facilities.

Petitioners state that approval of the financing arrangement is in the public interest. The financing arrangement will allow BCI and Cbeyond to strengthen their ability to compete in the market for telecommunications services in New Jersey by giving BCI and Cbeyond access to greater financial resources at lower interest rates. These resources will enable BCI and Cbeyond to introduce innovative products and services and to respond better to the competitive telecommunications environment.

In evaluating this Petition, 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, under N.J.S.A. 48:3-7, the Board is required to determine whether the public utility or a wholly owned

subsidiary thereof may be unable to fulfill its pension obligations to any of its employees. Finally, regarding N.J.S.A. 48:3-10, the Board must be satisfied that there are no adverse impacts on obligations to employees.

After a thorough review of the Petition and all related documents, the Board concludes that there will be no negative impact on rates or service quality since Petitioners' New Jersey customers will continue to receive the same services from the same entities at the same or similar rates, terms, and conditions. The Board is also satisfied that positive benefits will flow to customers based on the record presented by the Petitioners, as the transfer and financing arrangement will strengthen the Petitioners' competitive posture in the telecommunications market in New Jersey by giving the Petitioners access to additional resources. Finally, neither Petitioner has any employees in New Jersey, and thus the proposed transfer of control transaction will not cause an adverse impact to employees in New Jersey.

The Division of Rate Counsel has reviewed this matter and, by letter dated May 13, 2014, stated that it does not oppose approval of the Petition.

After review, the Board **FINDS** that the proposed transfer of control transaction and financing arrangements are consistent with the applicable law and are not contrary to the public interest, and therefore **FINDS** that the transfer of control is in accordance with the law and is in the public interest and **HEREBY AUTHORIZES** Petitioners to participate in the financing arrangements described herein. The Board **HEREBY ORDERS** Petitioners to notify the Board of the closing of the proposed transfer of control within seven (7) days of consummation.

This Order is issued subject to the following provisions:

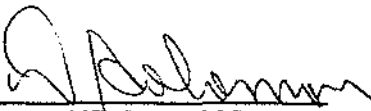
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matter affecting the Petitioners.
2. The Petitioners shall notify the Board, within five (5) business days, of any material changes in the financing transaction documents and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.
3. The Petitioners shall notify the Board of any material default on the terms of the financing transaction documents within five (5) business days of such occurrence.
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents, a default or assignment under such agreement does not constitute an automatic transfer of the Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioners.

6. The approval in this Order shall become null and void and of no effect with respect to any portion thereof which is not exercised by October 30, 2014.

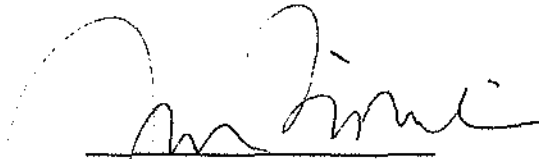
This Order shall be effective on June 27, 2014.

DATED: 6/18/14

BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT


JEANNE M. FOX
COMMISSIONER

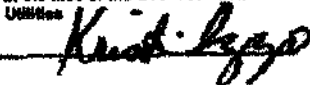

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
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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AND CBEYOND COMMUNICATIONS, LLC FOR APPROVAL OF FINANCING
ARRANGEMENTS AND TRANSFER OF CONTROL OF CBEYOND COMMUNICATIONS,
LLC DOCKET NO. TF14040376**

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