



Agenda Date: 12/19/12
Agenda Item: IVC

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/

TELECOMMUNICATONS

IN THE MATTER OF THE PETITION OF TELSCAPE)
COMMUNICATIONS, INC. FOR APPROVAL *NUNC*) ORDER
PRO TUNC TO PARTICIPATE IN VARIOUS)
FINANCING ARRANGEMENTS) DOCKET NO. TF12090873

Parties of Record:

Dennis C. Linken, Esq., for the petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On September 26, 2012, Telscape Communications, Inc., ("Telscape" or "Petitioner"), by its counsel, and pursuant to N.J.S.A. 48:3-7 and 48:3-9, filed a Petition for approval to participate in various financing arrangements of its corporate parent, TSC Acquisition Corporation ("TSC Acquisition"). Because Petitioner closed on the financing transactions in July 2012, approval is sought *nunc pro tunc*.

Telscape is a Delaware corporation with principal offices in Los Angeles, California and a wholly-owned subsidiary of TSC Acquisition, which is also a Delaware corporation with principal offices in Los Angeles, California. Telscape is authorized to provide resold and facilities-based competitive local exchange, exchange access, and interexchange service pursuant to certification issued in Docket No TE04091061 on December 9, 2004.

Telscape requests approval to (1) participate in senior secured credit facilities in the aggregate amount of \$12.19 million (the "Senior Secured Credit Facilities"); and (2) participate in an \$8.1 million subordinated mezzanine loan issued to TSC Acquisition (the "Mezzanine Loan") (together, the "Financing"). Telscape will be a co-borrower for the Senior Secured Credit Facilities, and it will be a co-guarantor for the Mezzanine Loan.

The Senior Secured Credit Facilities are comprised of the following: (a) a \$10 million revolving credit facility (the "Revolver") at a variable interest rate per annum equal to the prime rate plus 0.75%; (b) a \$1.19 million real estate term loan (the "Real Estate Term Loan") at a variable interest rate per annum equal to the prime rate plus 4.00%; and (c) a \$1 million over advance term loan (the "Over Advance Term Loan") at a variable interest rate per annum equal to the prime rate plus 4.00%. Telscape and the co-borrowers will be required to pledge substantially

all of their assets to secure the facilities. The proceeds of the Senior Secured Credit Facilities are to be used to (i) finance a portion of the consideration associated with the acquisition ("Acquisition") of Sage Telecom, Inc. ("Sage Telecom") and Sage Telecom of Texas, LP ("Sage Texas"); (ii) refinance any existing indebtedness of Telscape; (iii) finance the ongoing working capital needs of the borrowers; (iv) finance the general corporate purposes of the borrowers; and (v) pay fees and expenses associated with the Acquisition and the Senior Secured Credit Facilities.

The Mezzanine Loan is subordinate to the Senior Secured Credit Facilities, and has a four-year term with a fixed annual interest rate of 13%. TSC Acquisition is the borrower for the Mezzanine Loan, with Telscape as co-guarantor. The loan is secured by a pledge of all of TSC Acquisition's assets, and each corporate guaranty is secured by a pledge of all the guarantor's assets. The proceeds of the Mezzanine Loan are to be used to (i) finance a portion of the consideration associated with the Acquisition; (ii) refinance any existing indebtedness of Telscape; (iii) finance the ongoing working capital needs of the companies; (iii) finance the general corporate purposes of the companies; and (iv) pay fees and expenses associated with the Acquisition and the Mezzanine Loan.

Petitioner states that approval is being requested *nunc pro tunc* because the timing of the closing of the financing transaction was uncertain due to the difficulties in agreeing to terms for the Acquisition of Sage Telecom and Sage Texas (together, the "Sage Entities"), an acquisition funded through the Financing. The other co-borrowers and co-guarantors for the Senior Secured Credit Facilities and Mezzanine Loan, respectively, will be Sage Telecom and Sage Texas, both owned and controlled by TSC Acquisition. Sage Telecom and Sage Texas are telecommunications service providers. Petitioner states that the Sage Entities are not certificated by the Board to provide telecommunications services in New Jersey, and they are not regulated by the Board. Therefore, approval is not required for Sage Telecom and Sage Texas to participate in the Financing, or for TSC Acquisition to acquire them. Petitioner further states that the volatility of the lending markets, and the need to close quickly in order to capitalize on beneficial terms, required TSC Acquisition to consummate the Acquisition as soon as the parties reached agreement after long and protracted negotiations with the seller. Accordingly, post-closing approval is being sought for the Financing.

Petitioner asserts that the transaction is in the public interest because it enabled Telscape's parent, TSC Acquisition, to complete the acquisition of Sage Telecom and Sage Texas. This, in turn, according to Petitioner, will serve the public interest by enabling Telscape and the Sage Entities to offer customers a compelling alternative to legacy carriers through the combined footprint of the companies, and a comprehensive suite of telecommunications services. Telscape anticipates that the complementary strengths, product sets, and geographic footprints of the combined companies will position them to strengthen their ability to enhance service offerings and provide more advanced communications services to a broader customer base. Moreover, Telscape asserts that grant of the Petition will allow TSC Acquisition to improve its capital structure and enhance its market position by enabling the operating companies to expand and improve their operations and service offerings. Petitioner states that no customers will be affected by the transactions in New Jersey because it does not currently have any customers in the State.

Petitioner, in accordance with N.J.A.C. 14:1-12 et seq., filed a request for confidential treatment of the Financing documents submitted to the Board in conjunction with its review of this matter.

The Division of Rate counsel has reviewed this matter and, by letter dated November 8, 2012, does not object to the Board's approval of the petition.

After review, the Board **FINDS** that the proposed transaction is consistent with the applicable law and the public interest. The Board therefore approves, as within time, the purposes thereof. The Board **HEREBY AUTHORIZES** Petitioner to participate in the financing arrangements described herein.

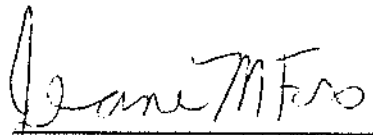
This Order is issued subject to the following provisions:

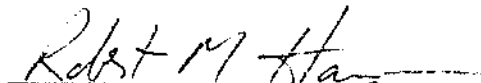
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting Petitioner.
2. Petitioner shall notify the Board of any material default in the terms of the notes within five business days of such occurrence.
3. This Order shall not be construed as directly or indirectly fixing, for any purpose whatsoever, any value of the tangible or intangible assets now owned or hereafter to be owned by Petitioner.
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 shall not constitute automatic transfer of Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.

This Order shall be effective on December 28, 2012.

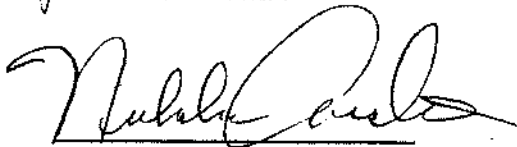
DATED: 12/19/12

BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
COMMISSIONER

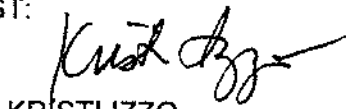

ROBERT M. HANNA
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

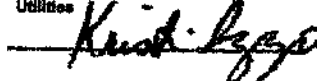

NICHOLAS ASSELTA
COMMISSIONER


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



SERVICE LIST

IN THE MATTER OF THE PETITION OF TELSCAPE COMMUNICATIONS, INC. FOR APPROVAL *NUNC PRO TUNC* TO PARTICIPATE IN VARIOUS FINANCING ARRANGEMENTS

Docket No. TF12090873

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Ave., 9th Floor
Post Office Box 350
Trenton, NJ 08625

Stefanie A. Brand, Esq., Director
Christopher White, Esq.
Jose Rivera-Benitez, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Dennis C. Linken, Esq.
Scarinci & Hollenbeck, LLC
1100 Valley Brook Avenue
Lyndhurst, NJ 07071-0790

Mark Beyer, Chief Economist
Robert Wojciak
Office of the Economist
Board of Public Utilities
44 South Clinton Ave., 9th Floor
Post Office Box 350
Trenton, NJ 08625

Tony S. Lee, Esq.
Venable LLP
575 7th Street, N.W.
Washington, DC 20004

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
44 South Clinton Ave., 9th Floor
Post Office Box 350
Trenton, NJ 08625

Ayelet Hirschhorn, DAG
Alex Moreau, DAG
Dept. of Law & Public Safety
Division of Law
123 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101

Sherri Flatt, Executive Director,
Regulatory Affairs
Sage Telecom, Inc.
3300 E. Renner Rd., Suite 350
Richardson, TX 75082-2800

Carol Artale, Esq.
Board of Public Utilities
44 South Clinton Ave., 9th Floor
Post Office Box 350
Trenton, NJ 08625

Valerie Haynes, Director
Case Management
Board of Public Utilities
44 South Clinton Ave., 9th Floor
Post Office Box 350
Trenton, NJ 08625