



Agenda Date: 8/21/13
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/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
OF BIRCH COMMUNICATIONS, INC. AND)
LIGHTYEAR NETWORK SOLUTIONS, LLC FOR)
APPROVAL TO TRANSFER ASSETS AND)
CUSTOMERS)

ORDER OF APPROVAL

DOCKET NO. TM13060493

Parties of Record:

Angela F. Collins, Esq., Cahill Gordon & Reindel LLP, Counsel for Birch Communications, Inc.
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel
John J. Greive, Vice President/General Counsel, Lightyear Network Solutions, LLC

BY THE BOARD:

On June 17, 2013, Birch Communications, Inc. ("Birch" or "Company") and Lightyear Network Solutions, LLC ("Lightyear") (collectively, "Petitioners") filed a verified petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 48:3-7, for approval or such authority as may be necessary to consummate a transaction between Birch and Lightyear through which Birch will acquire substantially all of the assets and customers of Lightyear. Upon consummation of the proposed transaction, and after Lightyear determines that it no longer needs its authorizations for operational or billing purposes, it will surrender its authorization and cancel its tariff in a separate filing. Birch will file any necessary tariff revisions to incorporate Lightyear's current services and rates so that Lightyear customers will continue to receive services under the same terms, rates, and conditions that they currently receive without any immediate changes.

BACKGROUND

Birch is a Georgia corporation with headquarters located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305. In New Jersey, Birch was authorized to provide local exchange and Interexchange services on July 1, 2009. See I/M/O the Verified Petition of Birch Communications, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE09040307, Order dated July 1, 2009. The Company has no employees in New Jersey. Petitioners state that on May 10, 2013, Birch and Lightyear entered into an Asset Purchase Agreement, pursuant to which, Birch will purchase certain assets and customers of Lightyear.

Lightyear is a Kentucky limited liability company with headquarters located at 1901 Eastpoint Parkway, Louisville, KY 40223. Lightyear is authorized by the Board to provide local exchange and interexchange telecommunications services in New Jersey. Lightyear received its authority in Docket No. TM03121032, Order dated March 3, 2004. Lightyear has no employees in New Jersey.

DISCUSSION

According to the petition, on May 10, 2013, Birch and Lightyear entered into an Asset Purchase Agreement (Agreement). Pursuant to the Agreement, Birch will purchase certain customer agreements and contracts, certain vendor Agreements and contracts, certain equipment, and certain intellectual property. Birch will not assume any of Lightyear's pre-closing liabilities and obligations. After consummation of the transaction, Birch will provide Lightyear's customers with the same service quality as before and handle all billing.

Petitioners have also complied with Mass Migration guidelines at N.J.A.C. 14:10-12.1 et seq., and will provide customers a 60-day and a 30-day notification. This notice would inform customers of the transfer and that they have the right to choose another carrier. Petitioners have requested a modification of mass migration guidelines at N.J.A.C. 14:10-12.7(a) to provide staff with a list of end users at least 60 days prior to departure. Staff has determined that a modification of this requirement should be granted since there are no priority end users involved in this migration.

According to the petition, Birch will also file any necessary tariff revisions to incorporate Lightyear's current services and rates so that affected customers will continue to receive the same service quality without any immediate changes to their service offerings, rates or terms and conditions and all billing will be handled by Birch. Birch will provide services to Lightyear customers utilizing its existing interconnection agreements, 911 arrangements, and numbering arrangements.

As a result, the proposed transaction will be transparent to customers and will not have a negative impact on the public interest, services to New Jersey customers, or competition.

By letter dated July 1, 2013, Division of Rate Counsel filed comments, stating that it recommends that the Board approve the petition.

FINDINGS AND CONCLUSION

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. However, being that there are no New Jersey employees those obligations are not at issue here.

After a thorough review of the petition and all related documents, the Board concludes that there will be no negative impact on service quality to New Jersey customers or the rates they pay. Nor will there be a negative impact on competition. The Board also concludes that a modification of mass migration N.J.A.C. 14:10-12.7(a) as proposed by Petitioners is in the best interest of the parties.

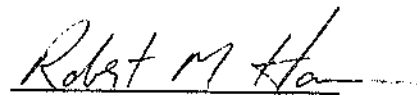
The Board also **FINDS** that, in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-52, Lightyear is responsible for the filing of its final annual report and any unpaid assessment liabilities due to the Board and to the Division of Rate Counsel. Birch shall also file a tariff with the Board that will incorporate Lightyear's current services and rates following the closing. Once all customers have been transferred to Birch, Lightyear shall surrender its authority to the Board.


Accordingly, after careful review of this matter, the Board **FINDS** that the Transaction will have no negative impact on competition, employees, or the rates to customers. The Board also **FINDS** that the asset and customer transfer will have no negative impact on the provision of safe, adequate and proper service and will positively benefit competition. Furthermore, the Board **FINDS** that the transfer will likely have a net positive benefit to the customers in the state.

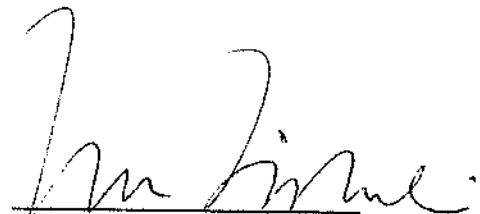
Therefore, the Board, after investigation, having considered the record and exhibits submitted in this proceeding, **FINDS** that the asset and customer transfer is in accordance with the law and in the public interest. The Board **HEREBY APPROVES** the request by Petitioners for the Transaction. Finally, the Board **FURTHER ORDERS** that the approval in this Order shall become null and void and of no effect to the extent that the approved Transaction has not been effected prior to March 31, 2014. The Board **HEREBY ORDERS** that Petitioners shall notify the Board of the closing of the proposed transaction within ten (10) days of consummation of the transfer. This Order shall become effective upon the service thereof, in accordance with N.J.S.A. 48:2-40.

DATED: 8/21/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT

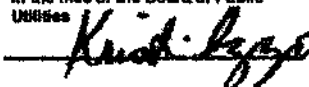

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COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


MARYANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
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


In the Matter of the Verified Joint Petition of Birch Communications, Inc., and Lightyear Network Solutions, Inc. for Approval to Transfer Assets and Customers to Birch Communications, Inc.

Docket No. TM13060493

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