



Agenda Date: 12/17/14
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 PETITION OF DSCI)
CORPORATION FOR APPROVAL OF A TRANSFER)
OF ASSETS AND RELATED TRANSACTIONS)
)
) DOCKET NO. TM14030237

Parties of Record:

Jeff Blumenfeld, Esq., Kutak Rock LLP, on behalf of Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On March 10, 2014, DSCI Corporation ("DSCI"), by verification, filed a letter ("Letter") with the New Jersey Board of Public Utilities ("Board") detailing DSCI's participation in a series of proposed pro forma transactions whereby DSCI intended to (1) create a wholly-owned subsidiary, DSCI, LLC; (2) assign all of DSCI's assets and certain liabilities to DSCI, LLC; and (3) sell a minority interest in DSCI, LLC to one or more commonly owned and managed private investment funds. The Letter stated that it was DSCI's understanding that Board approval was not required to complete the pro forma transactions.

DSCI is a privately held corporation organized pursuant to the laws of Massachusetts, with its principal business offices located in Waltham, Massachusetts. DSCI provides integrated business communications services, including facilities-based and resold local and long distance voice and data services; hosted unified communications and collaboration; network connectivity; Internet and IP-based services; and network integration, monitoring and server backup services. In New Jersey, DSCI was authorized to provide Local Exchange and Interexchange services on February 23, 2005. See Order In the Matter of the Petition of DSCI Corporation for a Certificate of Public Convenience and Necessity to Offer Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE04111410.

DSCI, LLC is a limited liability company organized pursuant to the laws of Delaware with its principal business offices located in Waltham, Massachusetts. DSCI, LLC is authorized to operate as a foreign limited liability company in New Jersey. DSCI, LLC was formed as a wholly-owned subsidiary of DSCI to effectuate the Transaction and to continue DSCI's operations in New Jersey and other jurisdictions. Additional information and qualifications of DSCI, LLC can be found in Docket No. TE14091038.

As described in the Letter, on March 28, 2014, pursuant to a Contribution Agreement between DSCI and DSCI, LLC, DSCI agreed to contribute all of its assets, including its customers, and certain liabilities into DSCI, LLC in exchange for a 100% ownership interest in DSCI, LLC. Under the terms of the Contribution Agreement, DSCI, LLC, issued Class A and Class B Units (collectively, the "Voting Units") to DSCI and Class C Units to the current shareholders of DSCI. Petitioner states that following the transactions, DSCI, LLC will continue to be overseen by the same management team and that DSCI will be able to recapitalize in a manner that minimizes transaction complexity and optimizes the outcome for DSCI, LLC and DSCI and its shareholders.

DSCI states that the transactions will be transparent to customers as the rates, terms, and conditions of service and ultimate ownership will not change as a result of the proposed transactions. Moreover, the same management will continue to be responsible for the day-to-day operations.

The Letter states that consummation of the proposed transaction will serve the public interest in promoting competition among telecommunications carriers by providing DSCI and DSCI, LLC with the opportunity to strengthen its competitive position through a revised capitalization structure and leverage additional experiences, perspectives and strategies to complement current management's capabilities in order to accelerate the growth of the business.

By letter dated April 16, 2014 the New Jersey Division of Rate Counsel ("Rate Counsel") submitted its first comments on this matter. Rate Counsel acknowledged that the proposed pro forma transactions contemplated by DSCI are consistent with the public interest, convenience, and necessity. However, Rate Counsel recommended that the Board deny DSCI's petition, for failure to meet the regulatory requirements enumerated under N.J.S.A. 48:2-51.1(a), N.J.S.A. 48:3-7, and N.J.A.C. 14:1-5.14(a) and (b), and for lack of legal representation by a New Jersey licensed attorney, as required under N.J.A.C. 1:1-5.1 and Court Rule 1:21-1(c). Rate Counsel recommended that the Board, in the alternative, defer consideration of the matter until New Jersey counsel had been retained by DSCI and an amended Petition had been filed.

On September 23, 2014, DSCI Holdings Corporation (*f/k/a* DSCI Corporation) submitted a revised petition ("Petition") by a licensed New Jersey attorney for the approval of the transfer and simultaneously DSCI, LLC filed a petition for the approval of a Certificate of Authority to provide telecommunications services in New Jersey¹. DSCI, LLC was authorized to provide Local Exchange and Interexchange services on December 26, 2014. See Order In the Matter of the Petition of DSCI, LLC for an Order of Approval to Provide Resold and Facilities-Based Competitive Intrastate Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE14091038.

On October 20, 2014, Rate Counsel submitted its second comments stating that it does not oppose Board approval of the requests contained in the Petition, subject to certain recommendations and conditions. Rate Counsel notes that Petitioner has failed to seek a waiver from the Board's Mass Migration rules under N.J.A.C. 12:10-12.1 et seq., as they would pertain to the Board's requirement to provide customers of DSCI, notice of the Pro Forma Transaction and transfer of customers. Rate Counsel states that although the Board has the authority to waive its Mass Migration Rules pursuant to N.J.A.C. 14:10-12.3(d) and 14:10-

¹ In its September 23, 2014 filing, DSCI Corporation indicated that it had changed its name to DSCI Holdings Corporation.

12.6(m), such waivers should only occur under very limited circumstances determined on a case-by-case basis and only when it is clear that customers will not be prejudiced or suffer detrimental impact by the waiver of notices required under the Board's regulations.

Rate Counsel acknowledges Petitioner's assertion that the transfer of customers will be seamless to customers, and customers will continue to receive the same service under the same terms and conditions. Rate Counsel is also cognizant that that the Board has previously granted waivers of its mass migration rules under certain similar instances. However, herein, Petitioner has failed to request such a waiver of the Board's rules. Rate Counsel submits that there may be occasion under certain fact sensitive and unique circumstances which may exist herein, where it makes sense to waive or partially waive or modify regulations to avoid customer confusion, or alleviate and ease unnecessary and duplicative administrative burdens. However, such waivers, modifications and exceptions must be carefully weighed against the potential unintended detriment which may result to customers who are the intended class of beneficiaries of these regulations. Therefore, Rate Counsel recommends that the Petitioner be directed to amend its filing to include a request for waiver of the Board's mass migration rules pursuant to N.J.A.C. 12:10-12.1 et seq. In the alternative, Rate Counsel recommends that the Board make the finding that the Petitioner failed to include a request for a waiver of the Board's mass migration rules, but that after review of the specific facts of the transfer of assets/customers herein, the Board determined to waive its mass migration rules with regard to this Transaction. In a letter received by the Board on November 24, Petitioner requested a waiver of the Board's Mass Migration rules under N.J.A.C. 12:10-12.1 et seq.

FINDINGS AND CONCLUSIONS

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 and N.J.S.A. 48:3-10, the Board is required to determine whether the public utility or a wholly owned subsidiary thereof may be unable to fulfill its obligations to any of its employees. After a thorough review of the Petition, the Board concludes that there will be no negative impact on rates or service quality since DSCI, LLC's New Jersey customers will continue to receive the same services at the same rates, through the same assets, provided by the same employees, and under the same terms and conditions. Also, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioner as the transaction will strengthen Petitioner's competitive posture in the telecommunications market due to its access to additional resources. In addition, the Board is persuaded that Petitioner will make every effort to minimize any potential adverse impact to employees in New Jersey.

Accordingly, the Board **FINDS** that the proposed transactions will have no material impact on the rates of current customers or on employees. The Board also **FINDS** that the transactions will have no negative impact on the provision of safe, adequate, and proper service, and will positively benefit competition. Therefore, after investigation, having considered the record submitted in this proceeding, the Board **FINDS** that the proposed transaction is in accordance with the law and in the public interest.

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, following the closing, DSCI is still responsible for the filing of its final annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to the Division of Rate Counsel. Also, following the closing and once all customers have been transferred, DSCI shall surrender its authority to the Board. DSCI, LLC shall also submit tariff

filings to incorporate or adopt the services and rates of the consolidating entities to the extent that such services and rates are different from those currently in the tariffs of DSCI.

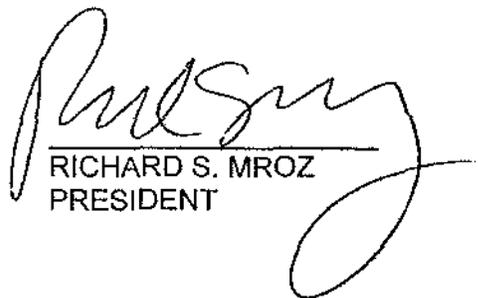
As for the request for the waiver regarding the Board's mass migration regulations, the Board **FINDS** that invoking those rules is not necessary in this instance and the request for waiver is **HERBY GRANTED**.

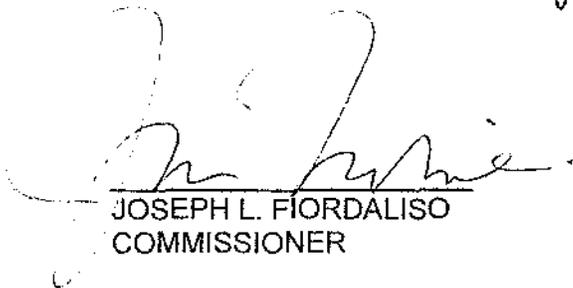
The Board **HEREBY APPROVES** the request by Petitioner for the transactions.

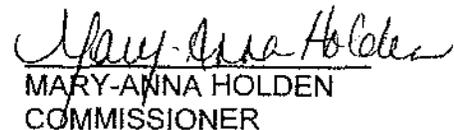
This Order shall be effective on December 29, 2014.

DATED: 12/17/14

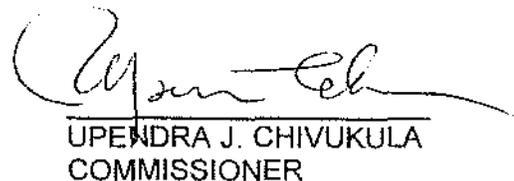
BOARD OF PUBLIC UTILITIES
BY:

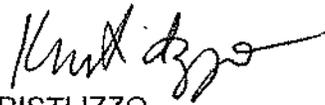

RICHARD S. MROZ
PRESIDENT


JOSEPH L. FIORDALISO
COMMISSIONER

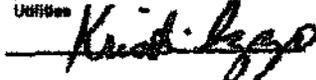

MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
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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TRANSFER OF ASSETS AND RELATED TRANSACTIONS
BPU DOCKET NO. TM14030237

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