



Agenda Date: 12/6/23
Agenda Item: 4A

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 PETITION OF)
ALTEVA OF WARWICK LLC, MBS INTERMEDIATE)
HOLDINGS, LLC, AND ARCHTOP FIBER LLC FOR)
APPROVAL OF A TRANSFER OF CONTROL)
ORDER
DOCKET NO. TM23060344

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Martin C. Rothfelder, Esq., Rothfelder Stern, L.L.C. on behalf of Alteva of Warwick LLC
Bradford M. Stern, Esq., Rothfelder Stern, L.L.C. on behalf of Alteva of Warwick LLC
Paul B. Hudson, Esq., Davis Wright Tremaine LLP on behalf of Archtop Fiber LLC
Carolyn A. Mahoney, Esq., Davis Wright Tremaine LLP on behalf of Archtop Fiber LLC
Paige K. Fronabarger, Esq., Wilkinson Barker Knauer, LLP on behalf of MBS Intermediate Holdings, LLC and Alteva of Warwick LLC

BY THE BOARD:

On June 6, 2023, Alteva of Warwick LLC (d/b/a Warwick Valley Telephone Company) ("Warwick"), MBS Intermediate Holdings, LLC ("MBS"), and Archtop Fiber LLC ("Archtop") (collectively, "Petitioners"), submitted a Verified Petition to the New Jersey Board of Public Utilities ("Board") requesting approval for the indirect transfer of control of Warwick from MBS to Archtop pursuant to N.J.S.A. 48:2-51.1 and 48:3-7 ("Transaction") ("Petition"). By this Order, the Board considers approval of the Transaction.

BACKGROUND

Warwick (“Licensee” or “Transferor”) is a limited liability company established under the laws of the State of New York with its principal place of business at 47 Main Street, Warwick, New York 10990. The Licensee is the incumbent local exchange carrier (“ILEC”) in portions of West Milford and Vernon, New Jersey, where it serves approximately 527 business and 1,396 residential access lines.¹ Warwick is also a competitive local exchange carrier serving approximately 21 business and 31 residential access lines in Vernon and Franklin Borough in the State of New Jersey.

Archtop (“Transferee”) is a Delaware Limited Liability Company founded in 2022 with its principal place of business located at 300 Enterprise Drive, Kingston, New York 12401. While Archtop does not have current operations in New Jersey, it is authorized by the New Jersey Department of Treasury to do business in New Jersey as a foreign limited liability company.² Archtop recently entered into agreements to purchase two (2) southeast New York-based ILECs: Germantown Telephone Co. and Hancock Telephone Co.³ The Petition stated that Archtop intends to acquire other broadband service providers beyond Licensee with the purpose of establishing a regional concentration and deploying faster, more secure and scalable broadband services.

Post Road Group (“PRG”) is an alternative investment advisory firm located in Stamford, Connecticut. PRG invests in both debt and equity across certain growth industries including digital infrastructure, telecom services, software, media, business services, and commercial real estate. Since its founding in 2015, the firm has invested and committed over \$2.3 billion of capital. PRG has completed 18 transactions in the digital infrastructure sector.

¹ See In re Warwick Valley Telephone Company for Authorization to Transfer Assets to Warwick Valley Telephone Restructuring Company, LLC and to Surrender its Certificate of Public Convenience and Necessity and; Petition of Warwick Valley Telephone Restructuring Company, LLC for (1) Issuance of a Certificate of Public Convenience and Necessity for Approval (II) Approval of its Adoption of Warwick Valley Telephone Company’s Plan for Alternative Regulation and Intrastate Tariffs and (III) Related Relief, BPU Docket No. TM12090812, Order Dated October 23, 2012. The Board was notified that Warwick Valley Telephone Restructuring Company LLC changed its name to “Alteva of Warwick LLC” via letter dated November 22, 2013.

² Archtop was granted a Certificate of Authority by the State of New Jersey Department of Treasury on May 31, 2023, Certificate Number: 145010889.

³ The Petitioners filed applications seeking approval for the proposed transfers of control from the Federal Communications Commission (“FCC”), the New York Public Service Commission (“NYPSC”), and the Pennsylvania Public Utilities Commission (“PAPUC”) for the Hancock transaction since it is also an ILEC in Pennsylvania. The FCC granted approval of the transactions via Public Notice released on August 3, 2023. (See WC Docket Nos. 22-421 and 23-29). The NYPSC granted approval of the Germantown transaction by Order issued on July 21, 2023 (See Case No. 23-M-0698), and approved the Hancock transaction by Order issued on September 15, 2023. (See Case No. 23-M-0042). The PAPUC granted approval of the Hancock Transaction on April 24, 2023 by letter. (See Docket Nos. A-2023- 3037647, A-2023-3037658, A-2023-3037659.

On May 12, 2023, Warwick and Archtop entered into a Stock Purchase Agreement (“Agreement”). Pursuant to the Agreement, and subject to all necessary regulatory approvals, Archtop proposed to acquire 100% of the equity interests in Alteva, Inc. (“Alteva”), and thereby acquire indirect control of Licensee, which is a wholly owned subsidiary of Alteva.⁴ The Petitioners stated that the purchase of the stock from Transferor will be in cash, with no debt issued by Archtop, and no debt or guaranty required to be issued nor any pledge of equity or assets required to be given by Alteva or the Licensee in connection with the Transaction.

The Petitioners stated that funding for the Transaction would be sourced from a combination of funds from the Archtop management team and Archtop’s financial partner, PRG and its affiliates. The Petitioners stated that while the Transaction would result in a change in the ultimate control of the Licensee, it would not have any immediate effect on the Licensee’s operations, nor would it result in the discontinuance, reduction, loss or impairment of service to any of the customers who receive services in connection with the Licensee’s ongoing operations. The Petitioners asserted that current customers will continue to receive services under the same rates, terms and conditions after the Transaction is complete, and any future changes to the rates, terms, and conditions of service would be undertaken pursuant to customers’ contracts, tariffs, and applicable law. According to the Petitioners, the transfer of control would not adversely affect the Licensee’s current customers and would be seamless and transparent to existing and potential customers in New Jersey.

The Petitioners asserted that the Transaction will not adversely impact competition because it will not result in the loss of any competitive provider in the markets in which the Licensee currently operates, and therefore would not reduce the choices available to consumers. The Petitioners claimed the Transaction would promote competition by strengthening and enhancing the broadband services offered by the Licensee. According to the Petition, Archtop has committed to plans to invest resources and technical expertise to upgrade significant portions of Licensee’s copper-based DSL network to an XGS-PON fiber network, offering multi-gig service, better reliability, and reduced latency. The Petitioners stated that the improved services would enhance the value proposition of Licensee’s services and put pressure on other service providers in the area to keep pace.

The Petitioners stated that the Licensee’s employees are based in New York, though some of the employees perform some work in New Jersey. The Petitioners asserted that the Transaction will not negatively affect Licensee’s ability to fulfill its pension obligations and would not adversely impact the provision of safe and adequate utility service at just and reasonable rates.

The Petitioners also asserted that the Board’s Mass Migration rules, N.J.A.C. 14:10-12.1, *et seq.* do not apply to this Transaction because Warwick does not “intend to depart” from its service territory. The Petitioners stated that Warwick would continue to provide uninterrupted service to its customers under the same terms and conditions and for the same reason, Archtop would not be acquiring the end users of Warwick. The Petitioners requested, to the extent the Board determines otherwise, a waiver from the notification and other requirements of the Mass Migration rules. The Petitioners stated that Warwick would continue to serve customers on an uninterrupted basis under the same terms and conditions and the notification requirements could lead to unnecessary customer confusion.

⁴ The Petitioners filed applications seeking approval for the proposed transfer of control from the NYPSC (See Case No. 23-C-0290) and the FCC (See FCC File No. ITC-T/C-INTR202302457 and WC Docket No. 23-178).

RATE COUNSEL AND PETITIONERS' COMMENTS

Over the course of the proceeding, the New Jersey Division of Rate Counsel (“Rate Counsel”) and Board Staff (“Staff”) engaged in comprehensive discovery with respect to the Petition, to which the Petitioners provided detailed responses. Rate Counsel filed initial comments with the Board on July 14, 2023, which were subsequently amended by Rate Counsel on September 28, 2023 after the Petitioners responded to additional discovery from Staff.

Specifically, Rate Counsel stated that it did not oppose approval of the Transaction, but urged the Board to require upgrades and/or updates in areas listed as industry focuses on PRG’s website. Rate Counsel supported the contemplated continued provision of innovative, high-quality telecommunications services to the public and the promotion of robust competition in the New Jersey telecommunications market, affirmed by Petitioners in their filing. Accordingly, Rate Counsel did not oppose a Board grant of approval, subject to the Board’s determination that the Transaction yields positive benefits to New Jersey customers and is in the public interest.

On October 17, 2023, the Petitioners filed a letter with the Board confirming that they had no objections to the terms in Rate Counsel’s letter. The Petitioners specifically clarified that, subject to the availability of facilities and construction labor, and the occurrence of force majeure events, the Petitioners do not object to Board approval being conditioned upon:

- Within one (1) year of closing, Petitioners would upgrade their backbone network with higher capacity middle mile connections to both Newark, New Jersey and Albany, New York, which will provide improved network diversity and redundancy, resulting in improved network performance and reduced network downtime;
- Within two (2) years of closing, Warwick would deploy new operations support systems (“OSS”) and business support systems (“BSS”) to improve network monitoring and repair and improve the customer service interfaces and experience; and
- Within three (3) years of closing, Petitioners would upgrade Warwick’s copper distribution to an XGS-PON fiber to the premises network to a significant portion of the homes passed in Warwick’s incumbent service area, that would be capable of delivering up to 10 Gigabit symmetrical speeds, which is 1,000 times faster than the current highest offered upload speed on Warwick’s copper network and 133 times faster than its fastest offered download speed.

DISCUSSION AND FINDINGS

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 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 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.

After investigation, and having considered the record, including, but not limited to, the Petition and comment letters of Rate Counsel and the Petitioners, the Board **FINDS** that the proposed Transaction is consistent with applicable law and is not contrary to the public interest. The Board also **FINDS** 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. This finding is directly reliant upon the commitments of Petitioners to the upgrades to Warwick's system as specifically detailed in Petitioners' October 17, 2023 letter. The Board also **FINDS** the Transaction will have no material impact on the Petitioners' employees, or their pensions. The Board further **FINDS** that the Transaction will have no material adverse impact on competition. Therefore, the Board **HEREBY AUTHORIZES** Petitioners to complete the proposed transaction.

This Order is issued subject to the following provisions:

1. The Order is subject to Petitioners notifying the Board Secretary and the Office of Cable Television and Telecommunications, in writing, within five (5) days of the date of the closing of the proposed transaction.
2. Within one (1) year of closing, the Petitioners have committed to upgrade their backbone network. Within one (1) year of the anniversary date of closing, Petitioners shall provide the Board with a detailed map of the upgrades made to their backbone network. The map will display the capacity upgrades made to the middle mile connections to Newark, New Jersey. The map will include an explanation of the improvements made and how they will improve network diversity, redundancy, result in improved network performance and reduce network downtime. Petitioners shall provide notice to the Board if the proposed upgrade is not completed within one (1) year of closing, including explanation as to reasons for delay and estimated time of completion.
3. Within two (2) years of closing, Petitioners have committed to deploy new operations support systems. On the anniversary of the date of the closing, the Petitioners shall provide an annual report to the Board with a detailed description of the new support systems implemented. The Petitioner shall include a detailed description and all relevant metrics used to substantiate how the new OSS and BSS improved network monitoring, repair and the customer service interfaces and experience. Petitioners shall provide notice to the Board if the proposed deployment of support systems is not completed within two (2) years of closing, including explanation as to reasons for delay and estimated time of completion.
4. Within three (3) years of closing, Petitioners have committed to upgrade Warwick's copper distribution to an XGS-PON fiber to the premises network to a significant portion of the homes passed in Warwick's incumbent service area. Beginning on the anniversary of the date of the closing, and on each anniversary through the third anniversary of closing, the Petitioners shall annually provide a detailed report to the Board describing the upgrade. The report shall include a map of the premises passed and a description of the improvements made to the network including provisioning for upload and download speeds capable of delivering up to 10 Gigabit symmetrical speeds, as well as upgrades to routers and switches. Petitioners shall provide notice to the Board if the proposed upgrade is not completed within three (3) years of closing, including explanation as to reasons for delay and estimated time of completion.

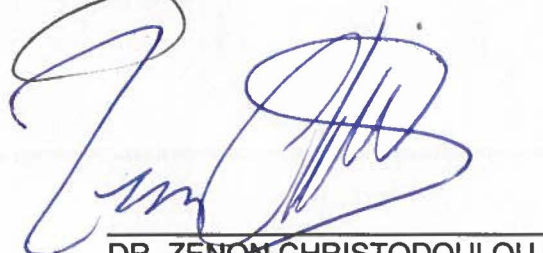
As to the request for a waiver of the mass migration rules, N.J.A.C. 14:10-12.1, et seq., the Board **FINDS** that Petitioners have demonstrated good cause for the waiver. The Petitioners state that Archtop will not be acquiring the end users of Warwick and do not intend to depart from its service territory. The Petitioners assert that they will continue to provide uninterrupted service to its customers under the same terms and conditions. For these reasons, Petitioners' request for a waiver of N.J.A.C. 14:10-12.1, et seq., is **HEREBY GRANTED**.

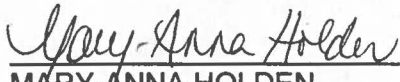
This Order shall be effective on December 13, 2023.

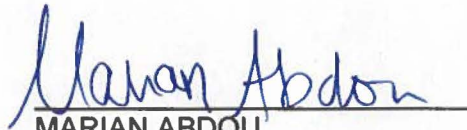
DATED: December 6, 2023

BOARD OF PUBLIC UTILITIES
BY:


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PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER


MARIAN ABDOU
COMMISSIONER

ATTEST: 
SHERRI 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 PETITION OF ALTEVA OF WARWICK LLC, MBS INTERMEDIATE HOLDINGS, LLC, AND ARCHTOP FIBER LLC FOR APPROVAL OF A TRANSFER OF CONTROL

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