



STATE OF NEW JERSEY
Board of Public Utilities

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Trenton, NJ 08625-0350
www.nj.gov/bpu

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED)
PETITION OF FIRST COMMUNICATIONS,)
LLC AND GORES AC HOLDINGS, LLC FOR)
APPROVAL TO TRANSFER CONTROL)
AND FOR A FINANCING ARRANGEMENT)

ORDER OF APPROVAL

DOCKET NO. TM11090580

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC for Petitioners
Stefanie A. Brand, Esq., Division of Rate Counsel, Department of Public Advocate

BY THE BOARD:

On September 29, 2011, First Communications, LLC ("FCL") and Gores AC Holdings, LLC ("Gores") (collectively, Petitioners) filed a verified petition pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10 seeking the Board's approval to consummate a transaction whereby Gores will acquire control of First Communications, Inc. (FCI), the parent company of FCL, and indirectly acquire control of FCL. Petitioners also seek approval, pursuant to N.J.S.A. 48:3-9 and 48:3-7, to participate in a financing arrangement whereby FCI will enter into a new credit facility of up to \$200 million and FCL will act as a guarantor and pledge existing and future jurisdictional assets in support of the financing arrangement. Following the transaction, FCL will continue to offer services at the same terms, rates and conditions on which it currently provides such services in the State.

BACKGROUND

FCL was formed on July 1, 1998 under the laws of the State of Ohio and is a wholly owned subsidiary of FCI, a corporation listed on the Alternative Investment Market of the London Stock Exchange. FCL's headquarters are located in Akron, Ohio. According to the petition, FCL is authorized to provide local, private line, and/or long distance services to both business and residential customers in 49 states. Its services include local and long distance services, toll free packages, Internet access and dedicated and private line services. In New Jersey, FCL was first authorized to provide facilities-based and resold local exchange and interexchange telecommunications services. See Order I/M/O the Verified Petition of First Communications, LLC, for Approval to Provide Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE04030220, dated May 12, 2004.

Gores is a limited liability corporation with its principal office located in Los Angeles, California. Gores is ultimately controlled by The Gores Group, LLC, and its managing member, Alec E. Gores. The Gores Group LLC is a private investment firm that focuses its investments in technology and telecommunications sectors. The Gores Group currently acts as a managing member of the general partner of certain investment funds that together hold non-controlling ownership of 13.1 percent of the voting stock of FCI through Gores FC Holdings, LLC ("Gores FC Holdings"). The petition states that Gores has a history of enhancing the value and operations of its investment companies by focusing on customers and employees, supporting management and providing access to capital. The petition asserts that Gores is well qualified managerially, technically and financially to own and control FCI and FCL. In addition to its own capital resources, the Gores Groups also provides access to working capital for its portfolio companies that might not be available to those companies as stand-alone enterprises.

DISCUSSION

The petition states that Gores will acquire control of FCI and FCL by a combination of the exercise of the right to appoint a majority of Directors and/or the purchase/acquisition of voting securities of FCI either directly or through Gores FC Holdings, as a result of which Gores will directly or indirectly hold more than 50 percent of the voting securities of FCI. Accordingly, Petitioners seek approval for the transfer of control of FCL to Gores.

Petitioners state that the only change to FCL will be to its ultimate ownership and control and the transfer of control of FCL will be transparent to customers. The transfer involves no disruption of service to customers or to the rates, terms and conditions of such services. Further, the proposed transactions will provide FCL access to Gores' financial resources, which will enable FCL the ability to expand its offerings and provide more advanced telecommunications services in New Jersey.

In addition, Petitioners request approval, pursuant to N.J.S.A. 48:3-7 and 48:3-9, to participate in a financing transaction whereby FCI will enter into a new credit facility of up to \$200 million and FCL will act as a guarantor and pledge existing and future jurisdictional assets in support of the financing arrangement. The \$200 million, consisting of a term loan of up to \$180 million and a revolving credit facility of up to \$20 million with a maturity date of up to seven years. The financing arrangement contemplates that FCL will act as a subsidiary guarantor and, to the extent it has or may have in the future jurisdictional assets in New Jersey, pledge such existing and future assets in support of the financing arrangement upon receipt of required regulatory approvals.

Petitioners are therefore seeking Board approval for FCL to enter into such subsidiary guarantee and authority to pledge jurisdictional assets in support of the financing to the extent that there are or may in the future be any such assets.

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.

The Staff's review indicates that the financing transactions and the use of the proceeds associated therewith are appropriate. While there is no guarantee in this regard, especially given the competitive environment in which FCL operates, the Board is satisfied that the transactions will not have an adverse impact on FCL's operations in New Jersey.

FINDINGS AND CONCLUSIONS

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 FCL's New Jersey customers will continue to receive the same services from the same entities at the same rates and under the same terms and conditions; nor will there be a negative impact on employees. Moreover, the Board is satisfied that positive benefits will flow to customers based on the record presented by Petitioners as the transaction will strengthen FCL's competitive posture in the telecommunications market due to its access to additional resources.

Accordingly, after careful review of this matter, the Board FINDS that the change of control will have no negative impact on the rates of current customers, or on employees. The Board also FINDS that the transfer 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 and exhibits submitted in this proceeding, the Board FINDS that the proposed transfer is in accordance with the law and is in the public interest. The Board HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transactions within 7 days of the consummation of the transfer.

The Board FINDS that the proposed financing transaction is consistent with the applicable law and is in the public interest. The Board therefore, approves the purposes thereof. The Board HEREBY AUTHORIZES Petitioners to:

1. Enter into the subsidiary guarantee and to pledge jurisdictional assets in support of the financing to the extent that there are or may in the future be any such assets.

This Order is 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 of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting Petitioners.
2. 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 Petitioners' assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.

3. 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 Petitioners.
4. The authority granted in this Order shall become null and void and of no effect with respect to any portion which is not exercised on or before May 1, 2013.
5. Petitioners shall notify the Board, within five business days, of any material changes in the proposed financing, and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.
6. Petitioners shall notify the Board of any material default on the terms of the notes within five business days of such occurrence.

DATED: 11/9/11

BOARD OF PUBLIC UTILITIES
BY:



LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



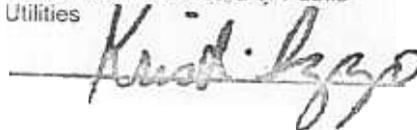
NICHOLAS ASSELTA
COMMISSIONER

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

Docket Nos. TM11090580

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