



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 PETITION OF)
FIRST COMMUNICATIONS, LLC AND SUMMIT DATA) ORDER
SERVICES, INC. FOR APPROVAL OF A TRANSFER)
OF CONTROL AND A FINANCING ARRANGEMENT) DOCKET NO. TM12110999

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On November 13, 2012, First Communications, LLC ("FCL" or "Licensee") and Summit Data Services ("Summit" and together with FCL, "Petitioners"), by their counsel and pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-10 filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting the approval of a transfer of control of FCL to Summit, and pursuant to N.J.S.A. 48:3-9 and 48:3-7, to participate in a financing arrangement whereby Summit will enter into a credit facility of up to \$35 million, and FCL will act as a guarantor, and pledge its assets in support of the financing arrangement. Following the consummation of proposed transfer, FCL will continue to offer services at the same terms, rates and conditions under which they currently offer such services in the State.

BACKGROUND

FCL is an Ohio limited liability company with offices located in Akron, Ohio. 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. FCL is a wholly-owned

subsidiary of First Communications Inc., ("FCI") which is a holding company that operates a group of carriers comprised of Licensee, Globalcom, Inc. ("Globalcom"), and Xtension Services, Inc. ("Xtension") that offers data and switched voice services in 49 states. 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. Globalcom and Xtension both operate as resellers in New Jersey.

Summit is a newly formed Ohio corporation formed for the purposes of this transaction with offices located in Akron, Ohio. Summit is owned by Joseph R. Morris, Mark Sollenberger, and Sandi R. Murphy all of whom were former employees of FCI. Petitioners aver that in addition to the management experience of Summit's owners, other well qualified management and operations personnel of Licensee will remain with the company following consummation of the Transaction, thereby assuring continuity of existing operations.

DISCUSSION

According to the petition, Summit will acquire control of Licensee by acquiring from FCI, 100% of the membership interests of FCL, 100% of the shares of Xtension, and 100 percent of the shares of First Global Telecom, Inc., the direct parent of Globalcom for cash purchase price of \$30 million and the assumption of certain liabilities. As a result, Licensee, (as well as Xtension and Globalcom) will become a wholly-owned subsidiary of Summit. Petitioners point out that following the proposed transaction, Licensee will continue to offer service with no immediate change in the name of the company or its rates or conditions of service and therefore, will be seamless and virtually transparent to New Jersey customers.

Petitioners are also requesting approval pursuant to N.J.S.A. 48:3-9 and 48:3-7 to participate in a financing whereby Summit will enter into a credit facility of up to \$35 million and Licensee will act as a Guarantor and will pledge its assets in support of the financing arrangement.

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 pension obligations to any of its employees. Petitioners have indicated that they have one employee in New Jersey that will not be affected by the transaction.

The Petitioners state that the transactions described herein will serve the public interest by enabling Licensee to continue to provide service to its customers without interruption and without any change in rates, terms or conditions.

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 Petitioner's New Jersey customers will continue to receive the same services at the same rates 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 Petitioners 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 Petitioners will make every effort to minimize any potential adverse impact to employees in New Jersey.

The Board'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 Petitioners operate, the Board is satisfied that the transactions will not have an adverse impact on Petitioners' operations 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 and exhibits submitted in this proceeding, the Board FINDS that the proposed transactions are in accordance with the law and in the public interest. The Board HEREBY APPROVES the request by Petitioners for the transactions and HEREBY ORDERS that Petitioners shall notify the Board of the closing of the proposed transaction within 7 days of consummation.

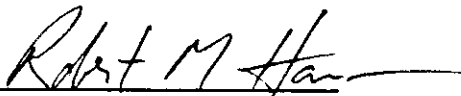
This Order is subject to the following provisions.

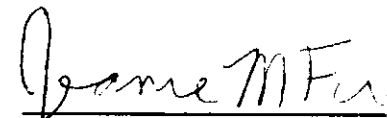
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything 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. Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangements and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.

DATED: 1/23/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER

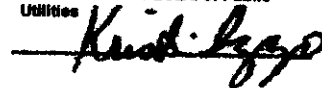

NICHOLAS ASSELTA
COMMISSIONER


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



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