



Agenda Date: 5/29/13  
Agenda Item: IVB

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION )  
OF TNCI OPERATING COMPANY LLC, ASSIGNEE, )  
AND TRANS NATIONAL COMMUNICATIONS )  
INTERNATIONAL, INC. (DEBTOR-IN-POSSESSION) )  
ASSIGNOR, FOR APPROVAL FOR ASSIGNEE TO )  
ACQUIRE THE CUSTOMERS AND CERTAIN ASSETS )  
OF ASSIGNOR )

ORDER OF APPROVAL

DOCKET NO. TM13040350

**Parties of Record:**

**Dennis C. Linken, Esq.**, Scarinci Hollenbeck, Counsel for Petitioners  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On April 25, 2013, TNCI Operating Company LLC ("TNCI-OpCo") and Trans National Communications International, Inc. ("Debtor-In-Possession") ("TNCI-DIP") (collectively, "Petitioners") by their counsel and pursuant to N.J.S.A. 48:3-7 filed a verified petition with the New Jersey Board of Public Utilities ("Board"), requesting approval for TNCI-OpCo to acquire the customers and certain assets of TNCI-DIP through a sale pursuant to Section 363 of the United States Bankruptcy Code. Petitioners assert that, as a result of the transaction, TNCI-DIP customers will be transferred to TNCI-OpCo and that TNCI OpCo will become the service provider for those customers. Petitioners also state that the transaction will be transparent in terms of the rates and services those customers will receive. TNCI-DIP will also surrender its authority to provide services in New Jersey.

**BACKGROUND**

TNCI-OpCo is a newly formed Delaware LLC with principal offices located at 114 E. Haley Street, Suite A, Santa Barbara, California 93101. In New Jersey, TNCI-OpCo applied to provide facilities based local exchange, exchange access and interexchange telecommunications services pursuant to authority granted by the Board. See Order, I/M/O the Verified Petition of TNCI Operating Company LLC for Authorization to Provide Resold and Facilities-Based Local Exchange, Exchange Access and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE13040265. According to the petition, TNCI-OpCo filed an application for the necessary authority to enable it to continue to provide in New Jersey the same services as TNCI-DIP's customers currently receive from TNCI-DIP.

TNCI-DIP is a Delaware corporation with principal offices at 2 Charlesgate West, Boston, Massachusetts 02215. In New Jersey, TNCI-DIP was authorized to provide Local Exchange and IXC Services pursuant to authority granted by the Board. See Order, I/M/O the Petition of TransNational Communications International, Inc for Authority to provide Local Exchange Telecommunications Services throughout the State of New Jersey Docket No. TE03121005 dated May 12, 2004. TNCI-DIP has no employees in New Jersey and has approximately 351 business customers.

## **DISCUSSION**

According to the petition, on January 31, 2013, TNCI-OpCo and TNCI-DIP entered into an Asset Purchase Agreement ("Agreement") pursuant to which TNCI-OpCo will acquire certain assets and customers of TNCI-DIP. Pursuant to the agreement, TNCI-OpCo will acquire customer accounts and contracts, telecommunications equipment and certain licenses and registrations to provide intrastate, interstate and international telecommunications services. The Bankruptcy Court issued a Sale Order on March 13, 2013 approving the Agreement and the Transaction. TNCI-OpCo will acquire approximately 351 business customer accounts in New Jersey. After consummation of the transaction, TNCI-DIP will cancel its authorization and tariff and provide TNCI-DIP customers with the same rates terms and conditions of services as were previously provided by TNCI-DIP.

Petitioners have also complied with Mass Migration guidelines at N.J.A.C. 14:10-12.1 et. seq., and have requested to send one 60 day customer notification since TNCI-DIP is not disconnecting services but rather transferring its customers to TNCI-OpCo. This notice would inform customers of the transfer and they have the right to choose another carrier. Petitioners have also requested modifications to some requirements under N.J.A.C. 14:10-12. Staff has reviewed all of petitioners requests for modifications and determined that since there is no discontinuance of service to end users and the transfer to TNCI-OpCo will be a seamless transfer that these modifications should be granted.

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. 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. Petitioner states that even though this sale is structured as a Section 363 asset purchase under the Bankruptcy Code, the transaction will appear to customers and the public more like a transfer of control since TNCI-OpCo will have the same TNCI name with which customers are familiar and the same rates and terms of service.

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

## **FINDINGS AND CONCLUSION**

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 TNCI-DIP New Jersey customers will continue to receive the same services at the same rates, 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.


The Board also **FINDS** that TNCI-OpCo shall file a tariff with the Board that will mirror the tariff of TNCI-DIP with its new name, and following the closing and once all customers have been transferred to TNCI-OpCo 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 January 1, 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: 5/31/13

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

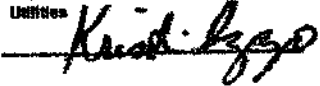
  
JEANNE M. FOX  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
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  


**In the Matter of the Verified Joint Petition of TNCI Operating Company, LLC, Assignee and Trans National Communications International, Inc. (Debtor-In-Possession) Assignor for Approval for Assignee to Acquire the Customers and Certain Assets of Assignor**

Docket No. TM13040350

Stefanie A. Brand, Esq., Director  
Division of Rate Counsel  
140 Front Street, 4th Floor  
Post Office Box 003  
Trenton, NJ 08625  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

James Murphy  
Division of Telecommunications  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625  
[James.murphy@bpu.state.nj.us](mailto:James.murphy@bpu.state.nj.us)

Chris Molner  
Division of Telecommunications  
Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625  
[Alan.molner@bpu.state.nj.us](mailto:Alan.molner@bpu.state.nj.us)

Ayelet Hirschhorn  
Deputy Attorney General  
Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ 07102  
[ahirschhorn@njtransit.com](mailto:ahirschhorn@njtransit.com)

Dennis C. Linken  
Scarinci Hollenbeck LLC  
1100 Valley Brook Avenue  
Post Office Box 790  
Lyndhurst, NJ 07071  
[dlinken@scarincihollenbeck.com](mailto:dlinken@scarincihollenbeck.com)

Jean L. Kiddoo  
Brett P. Ferenchak  
Bingham McCutchen LLP  
2020 K Street, N.W., Suite 1100  
Washington, DC 20006-1806  
[Jean.kiddoo@bingham.com](mailto:Jean.kiddoo@bingham.com)  
[Brett.ferenchak@bingham.com](mailto:Brett.ferenchak@bingham.com)

Andrew Isar  
Millar Isar Inc.  
4423 Point Fosdick Drive, N.W.  
Suite 306  
Gig Harbor, WA 98335  
[aisar@millarisar.com](mailto:aisar@millarisar.com)