



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF VERIFIED JOINT PETITION OF )  
INTERNAP CONNECTIVITY, LLC, DEBTOR-IN- )  
POSSESSION, AND INTERNAP CORPORATION, )  
DEBTOR-IN-POSSESSION FOR APPROVAL OF A )  
TRANSACTION THAT WILL RESULT IN A MATERIAL )  
CHANGE TO THE INDIRECT OWNERSHIP AND )  
ULTIMATE CONTROL OF INTERNAP )  
CONNECTIVITY LLC ) DOCKET NO. TM20040286

**Parties of Record:**

**James H. Laskey, Esq., Norris McLaughlin, P.A.**, on behalf of Petitioners  
**Stefanie A. Brand, Esq., Director**, New Jersey Division of Rate Counsel

**BY THE BOARD:**

On April 3, 2020, Internap Connectivity, LLC, debtor-in-possession (“Internap Connectivity”), and its direct parent company Internap Corporation, debtor-in-possession (“Internap”) (collectively, the “Petitioners”) submitted a Verified Petition to the New Jersey Board of Public Utilities (“Board”) pursuant to N.J.S.A. 48:2-51.1 and regulations of the Board for the approval for a reorganization transaction (the “Transaction”) that will result in an indirect change of control of Internap Connectivity. This Petition arises from a bankruptcy petition filed with the United States Bankruptcy court for the Southern District of New York (“Bankruptcy Court”) pursuant to a bankruptcy plan (the “Plan”) that was cooperatively developed between the Internap Companies and their creditors. On April 9, 2020, the Petitioners filed a letter with the Board as a supplement to the Petition with regards to a financing arrangement to be implemented upon Petitioners’ emergence from bankruptcy. The Petitioners note that they were expected to receive approval of the Plan by the Bankruptcy Court by May 4, 2020, and to close on the Transaction in as little as a week thereafter. Stating that it would be unlikely to obtain Board approval before the closing of the Transaction, Petitioners seek approval of this Petition *nunc pro tunc*. On May 8, Petitioners submitted to the Board a copy of the order dated May 5, 2020, of the United States Bankruptcy Court approving Petitioners’ Plan of Reorganization. Following closing of the Transaction, the same services will continue to be offered in New Jersey at the same rates, terms, and conditions to customers.

## **BACKGROUND**

Internap Connectivity is a direct wholly owned subsidiary of Internap, which is a publicly traded company with approximately 10,000 shareholders. Internap Connectivity is authorized by the Board to offer resold and facilities-based local exchange and interexchange telecommunications services throughout the state of New Jersey. See, In the Matter of the Petition of Internap Connectivity, LLC for Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE13040340, Order dated May 31, 2013. The petition states that Internap Connectivity has only a handful of customers and no employees in New Jersey. The parent company Internap has approximately 27 employees in its Secaucus, New Jersey data center, none of whom is an employee of Internap Connectivity. The petition states that Internap has no plans to reduce its New Jersey headcount and the retirement benefits for Internap's New Jersey employees will not be affected by the instant bankruptcy proceeding.

## **DISCUSSION**

Petitioners states that as part of the Plan that was cooperatively developed between the Internap Companies and their creditors, a transfer of control will result from an agreement by an ad hoc group consisting of a substantial majority of the holders of Internap's first lien debt (the "Lenders") to exchange a portion of their debt for, among other things, common stock of Internap (the "Transaction"). As a result of the Transaction, the Lenders, in the aggregate, will acquire the common stock of reorganized Internap ("Reorganized Internap") and, thus, will acquire indirect ownership of Internap Connectivity. Petitioners state that the Transaction will allow the Internap Companies to (i) emerge from bankruptcy protection as financially stronger, more competitive participants in the U.S. market for communications and cloud services, and (ii) provide their comprehensive suite of cloud-based and other innovative advanced communications services to current and newly-acquired customers. Petitioners state that Internap Connectivity will remain a direct wholly owned subsidiary of Internap upon the emergence from bankruptcy of these two companies. Petitioners state that the various funds and accounts managed by the following investment management firms, which currently hold Internap debt, are expected to hold voting and equity ownership interests of between 10 and 15 percent in Internap, and therefore also indirectly in its wholly owned subsidiary Internap Connectivity, upon their emergence; Angelo Gordon, a privately held alternative investment firm, BlackRock, a global investment manager, and Carlyle Investment Management LLC also a global investment firm. The Petition states that no entity or individual will hold a controlling interest in Internap upon its emergence from bankruptcy. In addition, no entity or individual other than the fund groups listed above will hold a direct or indirect equity or voting interest of 10 percent or more in Internap.

In connection with the proposed transaction, petitioners have requested Board approval for Internap Connectivity and other Internap subsidiaries to serve as guarantors on a post-bankruptcy financing.<sup>1</sup> Petitioners committed to participation of Internap Connectivity LLC in a financing arrangement to be implemented upon Petitioners' emergence from bankruptcy. Petitioners confirm that Internap Connectivity, along with the other subsidiaries of its direct parent corporation, Internap Corporation, will guarantee and pledge assets on secured liens consisting of (i) a \$75 million Priority Exit Facility with a three-year term and an interest rate equal to LIBOR plus one percent; and (ii) a \$225 million New Term Loan Facility with a five-year term with an

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<sup>1</sup> The Guarantors are: Internap Corporation ("INAP"), Datagram LLC, Hosting Intellect LLC, Internap Connectivity LLC, SingleHop LLC, Ubersmith, Inc., and Internap Technology Solutions Inc.

interest rate of LIBOR plus 0.65% (collectively, the "Exit Facilities"), upon exiting from the Chapter 11 reorganization plan of Internap Connectivity and Internap.

Due to sensitive time constraints in connection with the Reorganization Plan, Petitioners renewed their request for Board approval on a *nunc pro tunc* basis of Internap Connectivity's participation in the Exit Facilities. Prior Board approval of any encumbrance or mortgage of a telecommunications service provider is required, otherwise the transaction is void under New Jersey law. As the Petitioners' assets will secure the debt, in part, the Board's approval must be based on its satisfaction that the debt is made according to law and that the debt serves a beneficial purpose.

Petitioners submit that the proposed Transaction is in the public interest. The reorganization will allow the Internap Companies to reduce their debt load, and enable them to emerge from Chapter 11 protection allowing them to continue delivery of their services to business customers in New Jersey and across the United States. They further state that the proposed Transaction will enhance the Internap Companies' presence in the marketplace to the benefit of its New Jersey and national consumers without harming customers or competition in any market sector. The proposed Transaction ensures continuity of operations for Internap Connectivity and the other Internap Companies. Petitioners state that the proposed reorganization of the Internap Companies will significantly reduce the amount of debt owed by Reorganized Internap while providing new financial resources.

The New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments by letter dated May 1, 2020, stating it does not oppose the Board's approval of the Petitioner's request in this matter or given the unique and fact sensitive circumstances in connection with this filing expedited treatment or approval *nunc pro tunc* if such action is deemed appropriate and warranted by the Board.

By letter dated May 4, 2020 Petitioners filed a letter to the Board in response to the Rate Counsel letter mainly to restate and emphasize the basis for their seeking *nunc pro tunc* approval. Petitioners state that they are aware that statutes applicable to this Petition contemplate that approval by the Board is ordinarily given before the effective date of the transaction. However, as explained by Petitioners in their Petition, precedents exist for *nunc pro tunc* approval even in cases where the Petition itself was filed *after* the effective date of the transaction. Petitioners also reiterate that the transactions approved by the Bankruptcy Court will likely be completed as early as the end of the first week of May 2020, and no later than the next week, prior to the Board's scheduled meeting of May 20, 2020. To delay the closing beyond May 20, 2020 would upset the balance of interests reflected in the plan of reorganization, and put the success of the plan in jeopardy. As noted in the Petition, failure of the plan would jeopardize the continuation of service by Petitioners, and also threaten Petitioners' ability to maintain its current level of employment.

On May 8, 2020 Petitioners filed notice with the Board that the Bankruptcy Plan received approval on May 7, 2020.

### **FINDINGS AND CONCLUSIONS**

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 obligations to any of its employees.

After a careful review of this matter and all related documentation, the Board is satisfied that positive benefits will flow to customers based upon the record as the Transaction will allow Internap to restructure its debt and emerge from Chapter 11 and continue to provide services to customers on an uninterrupted basis. The Board therefore **FINDS** that the proposed Transaction will have no negative impact on rates or the present provision of safe, adequate and proper service since Petitioners' New Jersey customers will continue to receive the same services at the same rates and under the same terms and conditions. Petitioner asserts, and the Board accepts, that following the Transaction, Internap has no plans to reduce its New Jersey headcount and the retirement benefits for Internap's New Jersey employees will not be affected by the Transaction. Accordingly, the Board **FINDS** that the proposed Transaction is consistent with the applicable law, is not contrary to the public interest and will have no material impact on the rates of current customers, or on New Jersey employees. The Board also **FINDS** that the proposed Transaction will have no 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 **HEREBY AUTHORIZES** Petitioners to complete the proposed Transaction and because of Petitioners' verified assertion of exigent circumstances, the Board will consider the request for approval as within time on its merits. Approval under the time constraints is granted *nunc pro tunc*.

With regard to the Financing, 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 Petitioners operates, the Board is satisfied that the transactions will not have an adverse impact on Petitioner's operations in New Jersey.

After review, 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.

This Order is subject to the following provisions:

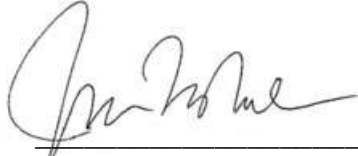
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything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

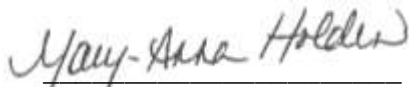
5. Petitioners shall notify the Board of any material default on the terms of the Exit Facilities within five (5) business days of such occurrence.

This Order shall be effective June 1, 2020.

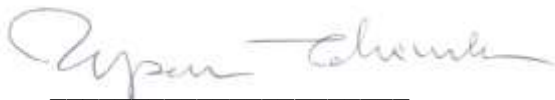
DATED: May 20, 2020

BOARD OF PUBLIC UTILITIES  
BY:

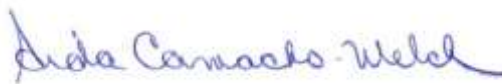
  
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JOSEPH L. FIORDALISO  
PRESIDENT

  
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MARY-ANNA HOLDEN  
COMMISSIONER

  
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DIANNE SOLOMON  
COMMISSIONER

  
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UPENDRA J. CHIVUKULA  
COMMISSIONER

  
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ROBERT M. GORDON  
COMMISSIONER

ATTEST:   
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AIDA CAMACHO-WELCH  
SECRETARY

IN THE MATTER OF VERIFIED JOINT PETITION OF INTERNAP CONNECTIVITY, LLC,  
DEBTOR-IN-POSSESSION, AND INTERNAP CORPORATION, DEBTOR-IN-POSSESSION  
FOR APPROVAL OF A TRANSACTION THAT WILL RESULT IN A MATERIAL CHANGE  
TO THE INDIRECT OWNERSHIP AND ULTIMATE CONTROL OF INTERNAP  
CONNECTIVITY LLC  
**DOCKET NO. TM20040286**

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