



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 JOINT PETITION OF) ORDER
NEW JERSEY DATANET TELECOM, LLC, DATANET)
COMMUNICATIONS GROUP, INC., LEXENT METRO)
CONNECT, LLC, LEXENT, INC., LIGHT TOWER FIBER LLC)
AND LIGHT TOWER FIBER LONG ISLAND LLC FOR)
APPROVAL OF (1) THE MERGER OF NEW JERSEY)
DATANET TELECOM, LLC, DATANET COMMUNICATIONS)
GROUP, INC., AND LEXENT METRO CONNECT, LLC WITH)
AND INTO LEXENT, INC.; (2) THE MERGER OF LIGHT)
TOWER FIBER LLC WITH AND INTO LIGHT TOWER FIBER)
LONG ISLAND LLC; AND (3) THE PARTICIPATION OF)
LEXENT, INC. AND LIGHT TOWER FIBER LONG ISLAND)
LLC IN AMENDED FINANCING ARRANGEMENTS OF) DOCKET NO. TF12070664
LIGHT TOWER LLC)

Parties of Record:

William K. Mosca, Jr., Esq., Bevan, Mosca, Giuditta & Zarillo, P.C., on behalf of Petitioners
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD¹:

On July 18, 2012, New Jersey DataNet Telecom, LLC ("NJDN"), DataNet Communications Group, Inc. ("DataNet"), Lexent Metro Connect, LLC ("LMC"), Lexent, Inc. ("Lexent"), Light Tower Fiber LLC ("LTF") Light Tower Fiber Long Island LLC ("LTFLI") (collectively, the "Petitioners"), by their counsel and pursuant to N.J.S.A. 48:2-51.1, N.J.S.A. 48:3-7 and N.J.A.C. 14:1-5.14 filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting the Board approval for (1) the merger of NJDN with and into DataNet, and the mergers of DataNet and LMC with and into Lexent, with Lexent as the surviving entity; (2) the merger of LTF with and into LTFLI, with LTFLI as the surviving entity; (3) the participation by Lexent and LTFLI in certain amended financing arrangements of Light Tower LLC, which is the

¹ Commissioner Mary-Anna Holden did not participate.

direct parent of Lexent, DataNet and LTF and the indirect parent of LMC, NJDN and LTFLI. NJDN, LMC and LTFLI are regulated by the Board, DataNet, Lexent and LTF are not regulated by the Board. Following the consummation of proposed transactions, Lexent will provide service to all of NJDN's and LMC's customers at the same terms, rates and conditions on which they currently offer such services in the state. And likewise, LTFLI² will continue to provide service to all of LTF's customers at the same rates terms and conditions as before the merger. There will be no change in the ultimate ownership and control of assets, liabilities or operations of the merged companies.

BACKGROUND

Lexent and DataNet, each a Delaware corporation, and NJDN, LMC, LTF and LTFLI, each a Delaware limited liability corporation have principal offices located in Boxborough, Massachusetts. The Petitioners and their affiliates operate over 6,400 fiber route miles that serve over 2,800 on-net buildings with transport and alternative access solutions in the Northeast. In New Jersey, the Petitioners offer Ethernet, dark fiber, wavelengths, SONET, Internet access and collocation services to carriers and large enterprise customers. NJDN is a wholly owned direct subsidiary of DataNet that is authorized by the Board to operate in New Jersey as a facilities based provider and reseller of local exchange and interexchange telecommunications services. See Order, In the Matter of the Petition of New Jersey DataNet Telecom, LLC for Authority to Provide Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE04111435, dated February 2, 2005. LMC is a wholly owned, direct subsidiary of Lexent that is authorized by the Board to operate in New Jersey as full service, facilities-based carrier of local and local and long-distance services. See Order, In the Matter of the Petition of Lexent Metro Connect, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE09070564, dated November 10, 2009. LTFLI (f/k/a KeySpan Communications Corporation), a wholly owned, direct subsidiary of LTF, is authorized by the Board to operate in New Jersey as a full service, facilities carrier of local and long-distance services. See Order, In the Matter of the Petition of KeySpan Communications Corporation for Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of New Jersey, Docket No. TE04020089, dated September 14, 2004. According to Petitioners, LTFLI has 115 customers and NJDN has 7 customers in New Jersey.

DISCUSSION

According to the petition, subject to the approval of the Board, the following transactions will occur simultaneously: (1) NJDN and its affiliates Connecticut DataNet, LLC and Hudson Valley DataNet Telecom, LLC (neither of which is regulated by the Board) will merge with and into their sole member, DataNet, with DataNet as the surviving entity; and (2) DataNet and LMC will merge with and into Lexent, with Lexent (which is also the direct owner of LMC) as the surviving entity. Upon completion of these transactions, Lexent proposes to assume LMC's New Jersey authority and tariff and NJDN's and LMC's contracts and perform all of NJDN's and LMC's obligations and to surrender NJDN's authority and tariff. Lexent's sole member is Light Tower LLC, which is an indirect, wholly owned subsidiary of Light Tower Holdings LLC. Following the consummation of those transactions, Lexent will provide service to all of NJDN's and LMC's customers at the same contractual rates, terms and conditions of service as before the

² Light Tower Fiber Long Island LLC will change its name to Lighttower Fiber Networks LLC.

mergers. Petitioners point out that there will be no change in ultimate ownership and control of assets, liabilities or operations of the merged companies and that the proposed transactions will be seamless and virtually transparent to New Jersey customers. Also, subject to approval of the Board, LTF will merge with and into its wholly owned subsidiary, LTFLI, with LTFLI as the surviving entity. As a result of this transaction, LTFLI will assume all LTF contracts and perform all obligations of LTF (LTF is a provider of dark fiber and does not have authority in New Jersey). Petitioners point out that all of the customers of LTF and LTFLI will continue to receive service at the same contractual rates, terms and conditions of service as before the merger and will be seamless and virtually transparent to customers. In connection with the Board's approval of these mergers, Petitioners request that the Board allow Lexent to assume LMC's authority to provide facilities-based local exchange and interexchange services in New Jersey and surrender NJDN's authority.

As a result of the change in control, the Petitioner has also requested Board approval under N.J.S.A. 48:3-7 to participate in a financing transaction. More specifically, Lexent and LTFLI, as indirect subsidiaries of Light Tower LLC, will be required to participate in existing financing arrangements of Light Tower LLC. Under the existing Credit Agreement, ("the Credit Agreement") as restated and amended on December 16, 2011, between Light Tower LLC, as Borrower, and the Lenders thereto and various other parties to the Credit Agreement, Lexent and LTFLI will provide a guaranty and will pledge their assets as security for the financing arrangements under the Credit Agreement. The Credit Agreement, as amended, provides for various credit facilities (the "LT Credit Facilities") in an aggregate amount of up to \$505 million including a revolving credit facility, incremental facility and term loans. The LT Credit Facilities will mature on November 30, 2015.

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 a total of four employees in New Jersey and that they will not be affected by the transactions.

The Petitioners assert that the transactions described herein will serve the public interest by enabling Light Tower Holdings LLC and its subsidiaries to serve its customers through a comprehensive and more efficient streamlined corporate structure. The proposed mergers are part of a company-wide initiative to increase operating and administrative efficiencies by reducing the number of operating entities interfacing with customers, vendors and regulatory authorities within the corporate footprint. Petitioners state that the transfers will be virtually transparent in that all existing customers are served under contracts which will be assumed by the surviving entities and there will be no change in rates terms or conditions under which NJDN, LMC and LTFLI currently serve customers.

Petitioners also submit and request a determination that the provisions of N.J.A.C. 14:10-12.1 et seq. (mass migration rules) do not apply to this proposed transaction. Petitioners state that Lexent and LTFLI do not seek approval to discontinue customers and do not propose to undertake any "migration" of customers as envisioned by the Board's regulations. Rather, customers will continue to receive service over the same facilities and under the same rates, terms and conditions as applied prior to the proposed mergers. Petitioners state that adherence to the full requirements of the mass migration rules would cause significant

confusion, would lead some customers to believe that their services are being interrupted, and would be contrary to the public interest. Thus, the proposed reorganization will not entail a customer "migration" and the regulatory safeguards the Board envisioned by the regulatory framework contained in N.J.A.C. 14:10-12.1.

Petitioners also request a waiver of the notice requirements of N.J.A.C. 14:1-5.14(b)(12). Petitioners note that they provide services to large enterprise customers and, all of whom are commercial parties that will remain customers of Light Tower LLC controlled entities, and who will be advised of the mergers in accordance with the terms and conditions of their customer service arrangements.

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 concludes that the provisions of N.J.A.C. 14:10-12.1 et seq. (mass migration rules) do not apply to this internal reorganization. Moreover, the proposed transactions will allow the Petitioners to streamline and rationalize their operations in a manner which will provide organizational and intra-corporate operational benefits. Further, the Board also concludes that the request for a waiver of the public notice requirements of N.J.A.C. 14:1-5.14(b)(12) is warranted in this occasion as the proposed transactions are internal and all customers will be notified of the mergers.

The Board also FINDS that, in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-52, following the closing, Petitioners are responsible for the filing of NJDN and LMC's final annual report with the Board and for the payment of any outstanding assessment liabilities to the Board and to the Division of Rate Counsel.

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.

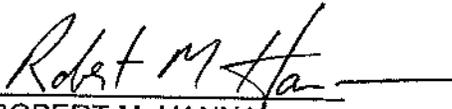
Accordingly, the Board FINDS that the proposed transactions will have no material impact on the rates of current customers, or on employees. The Board also FINDS that the transactions will have no negative impact on the provision of safe, adequate and proper service, and will positively benefit competition. 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.

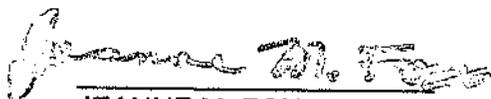
This Order is subject to the following provisions.

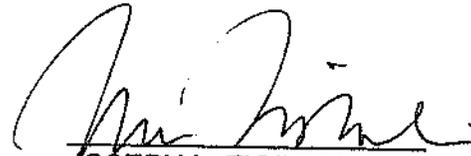
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or of the State in any future petition with respect to rates, franchises, services, financing, accounting, capitalization, depreciation, or any other matters affecting the Petitioners.
2. Notwithstanding anything 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.

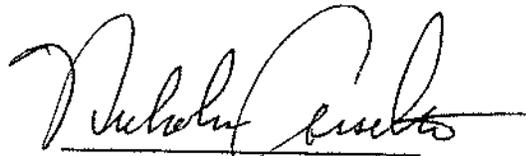
DATED: 10/23/12

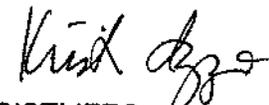
BOARD OF PUBLIC UTILITIES
BY:

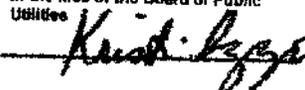

ROBERT M. HANNA
PRESIDENT


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.


IN THE MATTER OF THE VERIFIED JOINT PETITION OF NEW JERSEY DATANET
TELECOM, LLC, DATANET COMMUNICATIONS GROUP, INC., LEXENT METRO CONNECT,
LLC, LEXENT, INC., LIGHT TOWER FIBER LLC AND LIGHT TOWER FIBER LONG ISLAND
LLC FOR APPROVAL OF (1) THE MERGER OF NEW JERSEY DATANET TELECOM, LLC,
DATANET COMMUNICATIONS GROUP, INC., AND LEXENT METRO CONNECT, LLC WITH
AND INTO LEXENT, INC.; (2) THE MERGER OF LIGHT TOWER FIBER LLC WITH AND
INTO LIGHT TOWER FIBER LONG ISLAND LLC; AND (3) THE PARTICIPATION OF
LEXENT, INC. AND LIGHT TOWER FIBER LONG ISLAND LLC IN AMENDED FINANCING
ARRANGEMENTS OF LIGHT TOWER LLC
DOCKET NO. TF12070664

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WILLIAM K. MOSCA, JR.
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July 13, 2012

BPU MAILROOM

VIA EMAIL AND REGULAR MAIL

Honorable Kristi Izzo, Secretary
State of New Jersey
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350

JUL 16 2012

RECEIVING

TF 12070664

Re: Joint Petition of New Jersey Datanet Telecom, LLC et al. for Approval of Intra-Corporate Mergers of Light Tower Holdings LLC Subsidiaries

Dear Secretary Izzo:

Enclosed please find the original and ten (10) copies of the Joint Petition of New Jersey DataNet Telecom, LLC ("NJDN"), DataNet Communications Group, Inc. ("DataNet"), Lextent Metro Connect, LLC ("LMC"), Lextent, Inc. ("Lextent"), Light Tower Fiber LLC ("LTF") and Light Tower Fiber Long Island LLC ("LTFLI"), all of which are subsidiaries of Light Tower Holdings LLC, for approval of certain intra-corporate mergers and related actions. In addition, the Joint Petition requests that the Board determine that the provisions of N.J.A.C. 14:10-12.1, et seq. do not apply to the proposed mergers, and waive the notice requirements under N.J.A.C. 14:1-5.14(b)(12).

Confidential Exhibit C to the Joint Petition, five (5) copies of which are included in a sealed envelope, consists of confidential financial information of Light Tower LLC, a corporate parent of the Petitioners. The accompanying Certification of Leslie Brown requests that the Board maintain all copies of Confidential Exhibit C in confidence and not disclose it to any third party without the prior consent of Petitioner and the application of confidentiality requirements upon any receiving party.

CMS
Beslow
DAG
RPA
Telco(3)
Economist

New Jersey New York Washington, D.C.