



Agenda Date: 4/27/16
Agenda Item: IVC

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED JOINT PETITION)
OF DSCI, LLC AND U.S. TELEPACIFIC CORP. FOR) ORDER
APPROVAL FOR DSCI, LLC TO PARTICIPATE IN)
CERTAIN FINANCING ARRANGEMENTS OF U.S.)
TELEPACIFIC CORP.) DOCKET NO. TF16030231

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 March 14, 2016, DSCI, LLC and U.S. TelePacific Corp. ("TelePacific") (collectively, "Petitioners"), filed a joint petition pursuant to N.J.S.A. 48:3-9 and N.J.S.A. 48:3-7 requesting approval from the New Jersey Board of Public Utilities ("Board"), to the extent necessary, for DSCI, LLC to participate in the financing arrangements of TelePacific.

BACKGROUND

DSCI, LLC is a privately held Delaware limited liability company and its majority owner is DSCI Holdings Corporation ("Parent"), a privately held Massachusetts corporation. Both Parent and DSCI, LLC have their principal offices located at 303 Wyman Street, Suite 350, Waltham, MA 02451. DSCI, LLC is a competitive local exchange carrier and provider of hosted communications, managed IT and connectivity services. In New Jersey, DSCI, LLC is authorized to provide resold and facilities-based local and long distance telecommunications services pursuant to authority granted by the Board in Docket No. TE14091038 on December 17, 2014.

TelePacific is a California corporation with its headquarters located at 515 S. Flower Street, 47th Floor, Los Angeles, California 90071-2201. TelePacific Managed Services ("Merger Sub") is a California corporation and wholly-owned subsidiary of TelePacific. TelePacific provides facilities-based business communications services, including local, long distance, data and Internet services to small-to-medium sized businesses in California, Nevada and Texas. TelePacific's affiliate Mpower Communications Corp., a Nevada corporation, also serves customers in Nevada and California; TelePacific's affiliate Arrival Communications, Inc., a Delaware corporation, serves customers in California; TelePacific's affiliate TelePacific

Communications Co. f/k/a Tel West Network Services Corporation, a Washington corporation, serves customers in Texas. TelePacific and its affiliates are also authorized by the Federal Communications Commission to provide international and domestic interstate services as non-dominant carriers.

Pursuant to an Agreement and Plan of Merger ("Agreement") dated March 1, 2016, TelePacific will acquire ownership and control of DSCI, LLC by merging Merger Sub with and into DSCI, LLC, with DSCI, LLC surviving the merger as a wholly owned subsidiary of TelePacific ("Transaction"). As a result, immediately following the consummation of the Transaction, DSCI, LLC will be a direct, wholly owned subsidiary of TelePacific.

DISCUSSION

Petitioners request Board approval for DSCI, LLC to participate in the financing arrangements to be entered into concurrently with the consummation of the transfer of control of the Transaction as well as existing financing arrangements of TelePacific.¹

TelePacific and U.S. TelePacific Holdings Corp. ("TPAC Holdings"), the parent of TelePacific, entered into an Amended and Restated Credit Agreement in November 2014 consisting of term loans in the aggregated amount of \$505 million, revolving credit commitments in the aggregated amount of \$25 million, and an incremental facility (the "Credit Facility"). The term loans have a maturity date of November 24, 2020 and an interest rate of a floating interest rate of either LIBOR plus five-percent (5.0%) or an alternative base rate (calculated as the greatest of (a) the bank's prime rate, (b) the Federal Funds Rate plus one-half (1/2) of one-percent (1%) and (c) LIBOR plus one-percent (1.00%) plus four-percent (4.0%). The Credit Facility is secured by substantially all of the assets of TelePacific, TPAC Holdings, TPAC Holdings and certain of their subsidiaries. The Credit Facility is guaranteed by TelePacific, TPAC Holdings and certain of their subsidiaries. Upon consummation of the Transaction, DSCI, LLC will be a subsidiary of TelePacific. Petitioners request approval for DSCI, LLC to participate in the Credit Facility by providing a guaranty and related pledge of assets as security for the Credit Facility upon consummation of the Transaction.

In order to fund a portion of the purchase price and to pay costs associated with the Transaction, TelePacific expects to incur up to \$130 million in additional indebtedness (the "New Financing"). To maintain adequate flexibility to respond to market conditions and requirements, Petitioners seek approval for DSCI, LLC to participate in the New Financing arrangements which approval would permit TelePacific, to the extent market conditions may warrant, to modify the specific structure of the New Financing in a manner most favorable to TelePacific.

Petitioners assert that participation by DSCI, LLC in the Credit Facility and the New Financing will not adversely affect its current or proposed operations in New Jersey. The additional financial resources will allow the Petitioners to complete the proposed Transaction, which will enhance the ability of TelePacific and DSCI, LLC to expand their respective operations both in terms of service area coverage and through the ability of each entity to offer customers an expanded line of products and services. DSCI, LLC will continue to be operated by highly experienced, well-qualified management, operating and technical personnel. DSCI, LLC will

¹ A joint petition, bearing Docket No. TM16030230, requesting approval of the Transaction was simultaneously filed on March 14, 2016 with the joint petition in this matter. See I/M/O the Verified Joint Petition of DSCI Holdings Corp., DSCI, LLC and U.S. TelePacific Corp., for Approval for the Transfer of Control of DSCI, LLC to U.S. TelePacific Corp.

also have access to the financial, operational and managerial resources of TelePacific, and such support will strengthen its competitive position. Petitioners state that such support will strengthen the competitive position of DSCI, LLC to the benefit of the telecommunications marketplace in New Jersey.

Petitioners assert that approval of the financing arrangements will serve the public interest. According to the Petitions, the financing arrangements are necessary and appropriate, will not impair DSCI, LLC's ability to perform such services to the public, and will promote the corporate purposes of Petitioners. The financing arrangements will be conducted in a manner that will neither involve any assignment of authorization nor result in a change of carrier for DSCI, LLC's customers. Following consummation of the financing arrangements, the Petitioners represent that DSCI, LLC will continue to provide high-quality communications services to its customers without interruption and without change in rates, terms or conditions.

The ability of the utility to fulfill pension obligations to its employees is a factor for the Board to consider pursuant to N.J.S.A. 48:3-7. DSCI, LLC states that it does not have an employee pension plan. It also advises that employees' existing rights in any other retirement benefit plan offered by DSCI, LLC will be retained upon completion of the financing arrangements described herein. In the future, DSCI, LLC's employees may be able to rollover pre-closing contributions to their existing retirement benefits plan into another qualified benefit plan such as an Individual Retirement Rollover Account or a TelePacific retirement benefits plan.

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed this matter and, by letter dated April 1, 2016, stated that it had no objection to the relief requested in the petition. Specifically, Rate Counsel notes that the Petitioners have provided all the information required under the applicable statute and the Board's regulations, and the Petitioners claim that the transfer of ownership and the various financing contemplated is not contrary to the public interest and will serve a beneficial purpose for New Jersey customers. Rate Counsel further indicates that it "supports action which promotes increased competition and innovation in the New Jersey telecommunications market for the benefit of both residential and business customers in the state." (Letter from Rate Counsel at 2.)

FINDINGS AND CONCLUSIONS

After careful review of this matter, the Board **FINDS** that the Transaction will have no negative impact on competition, the rates of current customers or on employees. Therefore, the Board after investigation, having considered the record and exhibits submitted in this proceeding, **FINDS** that the financing transactions are in accordance with law and in the public interest, and **HEREBY AUTHORIZES** DSCI, LLC to participate in the financing arrangements described herein.

This Order is issued subject to the following provisions:

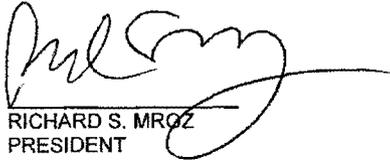
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matters affecting Petitioners.
2. Petitioners shall notify the Board, within five (5) 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.

3. Petitioners shall notify the Board of any material default in the terms of the proposed financing within five business days of such occurrence.
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transactions or other supporting documents (the "Financing Documents"), a default or assignment under such Financing Documents shall 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.
5. 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.

This order shall take effect May 7, 2016.

DATED: 4/22/16

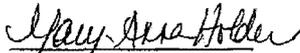
BOARD OF PUBLIC UTILITIES
BY:



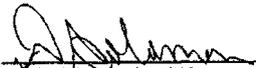
RICHARD S. MROZ
PRESIDENT



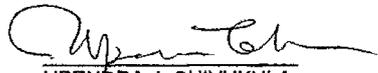
JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

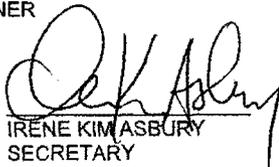


DIANNÉ SOLOMON
COMMISSIONER



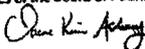
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



IRENE KIM ASBURY
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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FINANCING ARRANGEMENTS OF U.S. TELEPACIFIC CORP.
DOCKET NO. TF16030231

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