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CASE MANAGEMENT

**MAY 03 2018**

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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

May 2, 2018

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**VIA ELECTRONIC FILING AND FEDERAL EXPRESS**

The Honorable Aida Camacho-Welch  
Secretary, New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350  
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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

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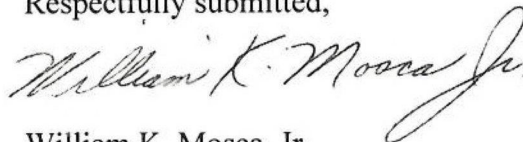
**Re: *In the Matter of the Verified Joint Petition of Cross River Fiber LLC and ZenFi Networks, Inc. For approval of a Business Merger, Transfer of Control and Certain Financing Arrangements***

Dear Secretary Camacho-Welch,

Enclosed for filing please find an original and ten (10) copies of the Public and Confidential Versions of the Verified Joint Petition referenced above. Also enclosed is a check in the amount of \$25.00 for the requisite filing fee. Please contact me if you have any questions regarding this Petition. Thank you.

**CMWS**  
LEGAL  
DITG  
RPA  
L. GILBERT  
H. Bond  
TELEC(4)

Respectfully submitted,



William K. Mosca, Jr.

Enclosures

Cc: Lawanda Gilbert  
Harold Bond  
Rocco DellaSerra  
Carol Artale  
Stefanie Brand  
Caroline Vacchier

MAY 03 2018

STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES BOARD OF PUBLIC UTILITIES  
TRENTON, NJ TRENTON, NJ

MAY 03 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

In the Matter of the	)	PETITION
Verified Joint Petition of	)	
	)	BPU Docket No. _____
CROSS RIVER FIBER LLC.	)	
and ZENFI NETWORKS, INC.	)	
	)	
For approval of a Business Merger, Transfer of	)	
Control and Certain Financing Arrangements	)	

**JOINT VERIFIED PETITION FOR APPROVAL OF BUSINESS MERGER, TRANSFER OF CONTROL AND CERTAIN FINANCING ARRANGEMENTS**

**PUBLIC VERSION**

Cross River Fiber LLC (“CRF”) and ZenFi Networks, Inc. (“ZenFi”), and their subsidiaries and affiliates (collectively, “Petitioners”), respectfully and jointly request the consent of the New Jersey Board of Public Utilities (“Board”) to the merger detailed in this filing. ZenFi will acquire CRF, and its wholly-owned subsidiary Cross River Fiber NJ, LLC (“CRF NJ”) and merge them into ZenFi, through an intermediary Merger Sub, as discussed in more detail below (the “Merger”). CRF will be the surviving entity following the merger with Merger Sub and will become a wholly-owned subsidiary of ZenFi. Petitioners also seek approval pursuant to N.J.S.A. 48:3-10 and N.J.A.C. 14:1-5.9 for CRF and ZenFi to participate in the equity transfers and financing arrangements arising in connection with the Merger (“Transactions”) as described more fully herein.

The Petitioners assert that this Merger and its related Transactions satisfy all necessary requirements and meet the standards set forth under all relevant statutes and regulations, including N.J.S.A. 48:2-51.1, such that the Board should grant approval. The Petitioners therefore

respectfully request that the Board commence its examination and act expeditiously to grant the approval, thereby enabling the Petitioners to consummate the Merger and related Transactions as quickly as possible. In support of this request, Petitioners respectfully submit the following:

**I. DESCRIPTION OF THE PETITIONERS**

**A. Cross River Fiber LLC**

Founded in 2011, CRF is a Delaware limited liability company with principal offices located at 461 Headquarters Plaza, Morristown, NJ 07960. CRF provides custom-designed, scalable and secure high-speed fiber network solutions for carriers, wireless mobility providers and enterprise businesses. CRF is authorized by the Board to provide both resold and facilities-based local exchange and interexchange telecommunications services throughout the State of New Jersey.<sup>1</sup> Its purpose-built fiber network extends into key data centers, carrier hotels, enterprise buildings, wireless access points and financial exchanges within New Jersey and New York. Providing dark and lit transport solutions, CRF connects businesses both to private intranets and also to the public Internet. CRF does not provide any end-user telecommunications services that New Jersey currently regulates.

CRF NJ, a wholly-owned subsidiary of CRF, is a New Jersey limited liability company. The Board has authorized CRF NJ to provide both resold and facilities-based local exchange and

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<sup>1</sup> *I/M/O the Petition of Cross River Fiber, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey*, BPU Docket No. TE12040297, Order dated June 18, 2012; and also *I/M/O the Joint Petition of REP/CRF Holdings LLC and Cross River Fiber, Inc. for a Transfer of Control*, BPU Docket No. TM14080906, Order dated October 22, 2014. CRF has a telecommunication services tariff on file with the Board, effective March 5, 2015.



interexchange telecommunications services throughout the State.<sup>2</sup> CRF NJ does not provide any end-user telecommunications services that New Jersey currently regulates.

CRF and CRF NJ have provided the Board with further information regarding their managerial, technical and financial qualifications, as well as the services they provide, as part of prior filings. These materials are a matter of public record, and Petitioners request that they be incorporated in this Petition by reference herein.

**B. ZenFi Networks, Inc.**

ZenFi Networks, Inc. was founded in 2013 by executives with significant experience in the telecommunications industry. ZenFi Networks, Inc. has deployed a purpose-built fiber network focused on cellular fronthaul/backhaul, Distributed Antenna Systems (“DAS”) / small cell deployments, and wholesale fiber opportunities to enable the Internet of Things (“IoT”). ZenFi is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of New Jersey.<sup>3</sup> ZenFi does not provide any end-user telecommunications services that New Jersey currently regulates. Further information regarding the managerial, technical and financial qualifications of ZenFi and the services it provides has been submitted to the Board previously and therefore is a matter of public record, and Petitioners request that it be incorporated by reference herein. Petitioners intend for the Merger and related

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<sup>2</sup> *I/M/O the Petition of Cross River Fiber, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey*, Docket No. TE11050320, Order dated July 14, 2011 and also *I/M/O the Joint Petition of REP/CRF Holdings LLC and Cross River Fiber, Inc. for a Transfer of Control* - BPU Docket No. TM14080906, Order dated October 22, 2014. CRF NJ has a telecommunication services tariff on file with the Board, effective March 5, 2015.

<sup>3</sup> *I/M/O ZenFi Networks, Inc.'s Verified Petition to Provide Resold and Facilities-Based Local Exchange and Interexchange Telecommunications Services Throughout New Jersey*, Docket No. TE14080907, Order dated September 30, 2014.

Transactions to be effectuated no later than August 31, 2018, and request Board approval prior to that date.

**II. DESIGNATED CONTACTS**

Inquiries or copies of any correspondence, order, or other materials pertaining to this Petition should be directed to:

For CRF:

Robert Sokota  
General Counsel and CAO  
Cross River Fiber  
461 Headquarters Plaza, North Tower, 2nd Floor  
Morristown, NJ 07960

For ZenFi:

Victoria O’Kane  
Chief Operating Officer  
ZenFi Networks  
90 White Street  
New York, NY 10013

Copies of any correspondence should also be sent to the following counsel for the Petitioners:

William K. Mosca, Jr.  
Bevan, Mosca & Giuditta, P.C.  
222 Mount Airy Road, Suite 200  
Basking Ridge, NJ 07920  
T: (908) 753-8300  
F: (908) 848-6423  
[wmosca@bmg.law](mailto:wmosca@bmg.law)

**III. DESCRIPTION OF PROPOSED MERGER**

CRF and ZenFi entered into a Merger Agreement (“Agreement”) effective April 13, 2018, under which ZenFi will acquire CRF and CRF NJ in exchange for an ownership interest in ZenFi that will represent approximately [REDACTED]% of the total outstanding ownership interests of ZenFi after giving effect to such issuance. ZenFi will acquire CRF by merging CRF with and into ZenFi Merger Sub Inc., a Delaware corporation (“Merger Sub”), which is a wholly-owned subsidiary of ZenFi created solely to allow for the Merger. As a result of the Merger, the separate existence of Merger Sub will cease, and CRF will survive the Merger as a wholly-owned subsidiary

of ZenFi. CRF NJ will also continue in existence as CRF's wholly-owned subsidiary, and therefore as an indirect wholly-owned subsidiary of ZenFi.

Several related Transactions will occur during the consummation of the Merger. First, CRF's equity interests outstanding immediately prior to the Merger will be converted into the right to receive newly-issued shares of ZenFi common stock; and as a result, the CRF's current owners will become partial owners of ZenFi. Second, immediately following the Merger, ZenFi will convert from a Delaware corporation to a Delaware limited liability company (the "Conversion"), whereupon each share of ZenFi common stock (including the newly-issued shares then held by CRF's former owners as a result of the Merger) will be converted into interests in the ZenFi limited liability company. Third, CRF and ZenFi also anticipate entering into a new credit facility (the "Credit Facility") at the closing of the transaction. Among other things, this Credit Facility will refinance the respective CRF and ZenFi current indebtedness; finance fees and expenses associated with the transaction; and provide general liquidity for operating purposes. ZenFi will secure the Credit Facility by a pledge of certain equity interests, as well as offering a first priority lien on substantially all of the assets and property of ZenFi, CRF and their subsidiaries. The Credit Facility will provide for up to \$ [REDACTED] in financing to ZenFi in the form of a \$[REDACTED] Senior Secured Revolver, a \$[REDACTED] Senior Secured Term Loan and a \$[REDACTED] Senior Secured Delayed Draw Term Loan. The initial lenders under the Credit Facility will be [REDACTED], [REDACTED], [REDACTED], with [REDACTED] acting as the administrative agent.



Upon closing of the Merger, ZenFi will continue in existence as an LLC with CRF as a wholly-owned subsidiary and CRF NJ as an indirect, wholly-owned subsidiary. For the Board's reference, pre- and post-Merger and Transactions organizational charts are provided as Exhibit A.

While the Merger and Transactions will result in changes in the equity ownership of both CRF and ZenFi, they are not expected to change the day-to-day operations or customer-facing activities of ZenFi, CRF or CRF NJ. The Merger and Transactions are expected to be transparent to the customers of ZenFi, CRF and CRF NJ in New Jersey. All three entities will retain their respective authorizations to provide telecommunications services within the State of New Jersey. The proposed Merger and Transactions are designed to bring the companies together into a streamlined organizational structure and have no impact beyond increasing efficiency of business operations, the types of services provided by the individual businesses and the geographic reach of the individual businesses.

Upon closing of the Merger and Transactions, management will continue to be a combination of both Petitioners such that the expertise and experience in both businesses will be retained. ZenFi, CRF and CRF NJ will continue to operate in New Jersey as previously authorized by the Board, without any substantive changes in senior management, and without adversely affecting the market for telecommunications services in the State of New Jersey.

The Merger and Transactions also will not adversely affect competition for the provision of telecommunications services in the State of New Jersey because all customers served by ZenFi, CRF or CRF NJ have, and following consummation of the Merger and Transactions will continue to have, access to multiple competitive alternatives. The Petitioners anticipate customers will benefit from the enhanced access of ZenFi, CRF and CRF NJ to capital and the availability of additional management expertise following the Merger and greater operational efficiency as a

result of the combination. In support of this petition, attached please find a copy of the executed Merger Agreement as Exhibit B. Also in support of this petition, attached please find a copy of the corporate resolutions as Exhibit C; and a copy of the recent balance sheets of the Petitioners and a pro forma income statement going forward, as Exhibit D; and a copy of the certificates of incorporation for the Petitioners, as appropriate, as Exhibit E.

#### **IV. STANDARDS FOR APPROVAL**

Petitioners submit that the Merger and its related Transactions will benefit New Jersey customers by enhancing the ability of ZenFi, CRF and CRF NJ to compete in the telecommunications marketplace in New Jersey. ZenFi, CRF and CRF NJ will continue to be operated by highly experienced, well-qualified management, operating and technical personnel. ZenFi, CRF and CRF NJ will also each have increased access to the operational and managerial resources of its related entities, and such support will strengthen each entity's competitive position. With regard to existing customers, ZenFi, CRF and CRF NJ will continue to provide service at the same rates and on the same terms and conditions as currently provided (subject to future changes pursuant to applicable law and contract provisions). The Merger and Transactions will also enable ZenFi, CRF and CRF NJ to enhance their ability to offer competitive and innovative products following the Merger and Transactions. The Merger and Transactions are expected to be transparent to customers of ZenFi, CRF and CRF NJ and are not expected to result in the discontinuance, reduction, loss or impairment of service to any customer. Ultimately, the Merger and Transactions will benefit businesses and consumers by enabling ZenFi, CRF and CRF NJ to become stronger competitors in their respective markets.

Pursuant to N.J.S.A. 48:2-51.1, Petitioners' proposed Merger and Transactions satisfy the applicable Board criteria of reviewing the impact of the acquisition (a) on competition; (b) on the



rates of ratepayers affected by the acquisition of control; (c) on the employees of the affected public utility or utilities; and (d) on the provision of safe and adequate utility service at just and reasonable rates. Indeed, there are no adverse consequences associated with the Merger or its related Transactions.

In each element, the Merger and Transactions have no impact. None of the impacted entities provides services currently regulated by New Jersey, so there is no impact upon competition or rates. All employees will be retained in this Merger and Transactions, and nothing in this process will impact the provision of safe and adequate utility service at just and reasonable rates. In satisfaction of the requirements of N.J.S.A. 48:3-7 and N.J.S.A. 48:3-10, this Merger and its related Transactions will have no impact upon the ability of the Petitioners to satisfy pension benefits previously enjoyed by any employee in either entity. Additionally, pursuant to N.J.A.C. 14:1-5.14(c), the Merger and Transactions will result in positive benefits to the customers and the State of New Jersey while causing no negative impacts to the criteria listed above. Specifically, the Merger and Transactions will create a stronger company, with significant corporate experience, better access to capital, and a commitment to create and increase competitive options for customers in the State.

**V. A DETERMINATION THAT THE MASS MIGRATION RULES OF N.J.A.C. 14:10-12.1, et seq., DO NOT APPLY IS APPROPRIATE BASED UPON THE NATURE AND SCOPE OF THIS TRANSACTION**

ZenFi, CRF and CRF NJ will remain in New Jersey as a result of the proposed Merger and Transactions – no company will leave the state. Accordingly, Petitioners seek no approval to discontinue customers, and they do not propose to undertake any “migration” of customers as contemplated by the Board’s mass migration regulations, appearing at N.J.A.C. 14:10-12.1, et seq. ZenFi, CRF or CRF NJ customers – all of which are sophisticated enterprise end-users and other

telecommunications service providers and carriers, and which currently purchase dark fiber, lit services and colocation – will continue to receive services over the same facilities as they used prior to the Transaction.

Application of the mass migration rules would cause significant confusion to customers of ZenFi, CRF and CRF NJ, who could be led to believe that their services are being interrupted, which is not true and would not be in the public interest. Because the proposed Merger and its related Transactions will not entail a customer “migration,” the regulatory safeguards of N.J.A.C. 14:10-12.1, *et seq.* are neither necessary nor required. Accordingly, ZenFi, CRF and CRF NJ respectfully request that the Board determine that the provisions of N.J.A.C. 14:10-12.1, *et seq.* do not apply to the proposed Merger and Transactions.<sup>4</sup>

In connection therewith, Petitioners respectfully request a waiver of the notice requirements of N.J.A.C. 14:1-5.14(b)(12), to the extent necessary. As stated above, ZenFi, CRF and CRF NJ provide, in the State of New Jersey, intrastate telecommunications services to large enterprise customers, and other telecommunications service providers, all of whom are sophisticated, commercial parties who will remain customers post-closing of the Merger and Transactions in accordance with the terms of their customer service agreements with ZenFi, CRF and CRF NJ, and who will be advised of the Merger and Transactions in accordance with the terms and conditions of the customer service agreements.


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<sup>4</sup> *See, I/M/O Joint Petition of Telcove Operations, LLC And Telcove Investment, LLC for Grant of Authority To Complete An Internal Reorganization And Assignment Of Assets And Customers*, Docket No. TM06120889 (Mar. 5, 2007) (holding that customer migration notice requirement did not apply to a transaction where the petitioner, like ZenFi, CRF and CRF NJ in this case, was not exiting the New Jersey market).

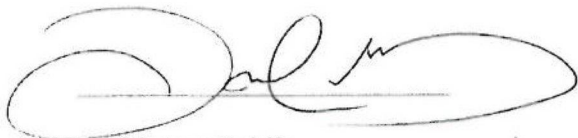
VERIFICATION

I, Robert Sokota, of full age, hereby depose and say:

1. I am the General Counsel and Chief Administrative Officer of Cross River Fiber, LLC, a co-Petitioner in this matter;
2. I make this Verification in support of the Joint Petition of Cross River Fiber, LLC and ZenFi Networks, Inc. for Approval of a Business Merger, Transfer of Control and Certain Financing Arrangements; and
3. I have read the Petition and state that the factual allegations contained therein are true to the best of my knowledge, information and belief.

By:   
Robert Sokota  
General Counsel and Chief Administrative Officer,  
Cross River Fiber, LLC

Sworn to and subscribed before  
me this 30th day of April, 2018

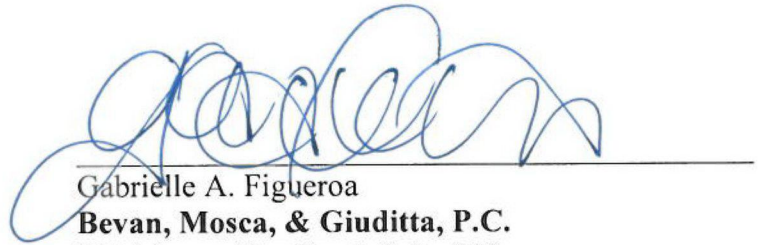
  
Notary Public  
My commission expires 10/27/2020

DANIEL T MARVIN  
NOTARY PUBLIC OF NEW JERSEY  
COMMISSION EXPIRES OCTOBER 27, 2020



**CERTIFICATION**

Pursuant to R. 1:4-4(c), I am an attorney-at-law duly admitted to practice in the State of New Jersey. I certify that ROBERT SOKOTA has acknowledged that the signature on the electronic transmission is his signature. I further certify that the original document bearing the original signature will be filed if requested by the Board or a party.



Gabrielle A. Figueroa  
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Dated: May 2, 2018