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CASE MANAGEMENT

MAY 18 2018

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

STEFANIE A. BRAND  
Director

RECEIVED  
State of New Jersey  
MAIL ROOM

140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. Box 003

TRENTON, NEW JERSEY 08625

BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

MAY 18 2018

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*5/23/18*

PHIL MURPHY  
Governor

SHEILA OLIVER  
Lt. Governor

May 15, 2018

**Via Electronic and Regular Mail**

Ms. Aida Camacho, Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, New Jersey 08625-0350

Re: I/M/O 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

**BPU Docket No.: TM18050503 and TF1805-pending**

Dear Secretary Camacho:

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed the above referenced Joint Petition of Cross River Fiber, LLC (“CRF”) and ZenFi Networks, Inc., (“ZenFi”), collectively (“Petitioners”) seeking a grant of approval by the New Jersey Board of Public Utilities (“Board”) of a transfer of control of CRF and its subsidiary Cross River Fiber NJ, LLC (“CRF NJ”) to ZenFi, and approval of financing in connection with the proposed merger/transfer and expedited treatment of this matter.<sup>1</sup> Rate Counsel submits the within comments on this matter for the Board’s consideration. Enclosed with this original please find ten copies. Kindly return a date/stamped “Received” and/or “Filed” copy to Rate Counsel. For the reasons that follow Rate Counsel does not object to Board approval of the Petitioners requests in this matter.

**Petitioners and Merger Transaction**

CFR a Delaware limited liability company headquartered in Morristown, New Jersey and its subsidiary CFR NJ a New Jersey limited liability company provide various telecommunications and communications services including dark and lit high-speed fiber transport network solutions and are authorized to provide both resold and facilities-based local exchange and interexchange telecommunications services to carriers, wireless mobility providers

<sup>1</sup> MBS Holding, Inc., is the corporate parent of Alteva Warwick, LLC, and Momentum Telecom, Inc. See, Exhibit 2 MBS Holdings Pre Transaction Organizational Chart. Petition at pp. 1, 8, and 13. In addition, Petitioners via the Affidavit of Michael C. Sloan, counsel to Petitioners: MBS Holdings, Inc., and Momentum Telecom, Inc., have stated that Exhibits 5,7, 8, and 9 are confidential and proprietary and have requested that the Exhibits listed therein be filed under perpetual seal. Rate Counsel notes that a “Public” redacted version of the filing has been provided.

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and enterprise customers throughout New Jersey.<sup>2</sup> ZenFi is authorized to provide facilities-based and resold local exchange and interexchange telecommunications services in New Jersey with a focus on fiber fronthaul/backhaul, Distributed Antenna Systems (“DAS”)/small cell deployments.<sup>3</sup>

Pursuant to a Merger Agreement effective April 13, 2018, ZenFi will acquire CRF and its subsidiary CRF NJ following the merger of CRF with ZenFi Merger Sub Inc., a Delaware corporation wholly-owned by ZenFi and created solely to allow for the merger transaction.<sup>4</sup> Post transaction CRF (inclusive of its subsidiary, CRF NJ) as the surviving entity will become the wholly-owned subsidiary of ZenFi.<sup>5</sup> Petitioners assert that the proposed merger will have no substantive changes on senior company management which will continue to be a combination of both Petitioners, customers will not be migrated to any other company and the transaction will be seamless and transparent to customers, who will continue to receive the same service at the same rates and conditions and thus will not negatively affect the telecommunications market in New Jersey.<sup>6</sup> Petitioners further assert that they are not exiting the New Jersey market, there will be no migration of customers, therefore the Board’s mass-migration rules, *N.J.A.C.* 14:10-12.1, *et. seq.*, do not apply and in the alternative, should the Board determine otherwise, seek a waiver of the Board’s mass-migration rules.<sup>7</sup> Rate Counsel concurs with the Petitioners that the particular facts herein do not trigger application of the Board’s mass-migration rules and customer notification required under the rules could lead to unnecessary customer confusion. However, should the Board determine otherwise, Rate Counsel likewise, does not oppose the Board’s grant of Petitioners’ request for waiver of these rules.

### Financing

Petitioners state that during and post-consummation of the Merger Transaction, ZenFi shares of common stock will be converted and re-issued to CRF as equity interest in exchange for the merger of the companies. In addition, a “New Credit Facility” will be entered into guaranteed by the assets of ZenFi and CRF and their subsidiaries up to an aggregate amount that will refinance current revolving Senior Secured Revolver, Senior Secured Term Loans and Senior Secured Delayed Term Loans and will cover transaction expenses and provide general liquidity for operating purposes.<sup>8</sup>

The Financing Arrangements will also cover Petitioners’ growth initiatives positioning the company as a stronger market competitor.<sup>9</sup> In addition, Petitioners state there are no negative impact on employees, customer service and the financing arrangements will enable Petitioners to

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<sup>2</sup> Petition at pp.2-3 and at Petition, *fn* 2, p. 3, referencing Board Orders in docket TE11050320, dated July 14, 2011 and docket TM14080906, dated October 22, 2014.

<sup>3</sup> *Id.* at p. 3 and at *fn* 3, citing to Board Order in docket TE14080907, dated September 30, 2014.

<sup>4</sup> *Id.*, at pp. 6-7. See Exhibit A, (pre- and post-merger organizational charts).

<sup>5</sup> *Id.* See related Exhibits B through E.

<sup>6</sup> *Id.*, at p. 6.

<sup>7</sup> *Id.*, at pp. 8-9, citing to Board Order in docket TM06120889, dated March 5, 2007.

<sup>8</sup> *Id.*, at p. 5.

<sup>9</sup> *Id.*, at pp. 10-12, at paragraphs 28 -35.

continue to provide high quality services to customers without interruption to service or change in terms and condition of services in New Jersey.<sup>10</sup>

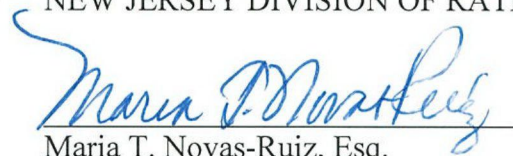
Board approval must be based on its satisfaction that the transaction is in the public interest and meets the requirements of *N.J.S.A. 48:2-51.1 et seq.* Petitioners state that the transaction will not have a negative impact on competition, rates and services nor impact the continued safe and adequate provision of telecommunications service at just and reasonable rates thus satisfies the necessary statutory requirements for approval and seek waiver as may be determined by the Board to be necessary of certain pleading requirements under *N.J.A.C. 14:1-5.14*.<sup>11</sup>

Rate Counsel supports the contemplated continued provision of innovative, high quality telecommunications services to the public for the benefit of both residential and business customers in this state. Accordingly, Rate Counsel does not oppose Board approval of Petitioners' requests in this filing.

Thank you for your attention to this matter.

Very truly yours,

STEFANIE A. BRAND, ESQ.  
DIRECTOR  
NEW JERSEY DIVISION OF RATE COUNSEL



Maria T. Novas-Ruiz, Esq.  
Assistant Deputy Rate Counsel

MNR/td  
c: Service List

RPAPROD #100973

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<sup>10</sup> Petition at pp. 7-8.

<sup>11</sup> Petition at p. 9.

I/M/O Alteva of Warwick, LLC,  
Momentum Telecom, Inc., and MBS  
Holdings, Inc., for Approval of a Transfer  
of Control and Security Transaction

**BPU Docket No. TM18040398**  
**Service List**

Aida Camacho, Board Secretary  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, NJ 08625

Stefanie A. Brand, Director  
NJ Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Lawanda Gilbert, Esq.  
Director, Office of Telco & Cable  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, NJ 08625

Harold Bond, Bureau Chief  
Office of Telco & Cable  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, NJ 08625

Carol Artale, Esq.  
Legal Specialist  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, NJ 08625

Rocco Della-Serra, Administrative  
Analyst, Accounting  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, NJ 08625

Christine Lin  
Administrative Analyst, Accounting  
New Jersey Board of Public Utilities  
44 S. Clinton Ave., 3<sup>rd</sup> Fl., Ste. 314  
P.O. Box 350  
Trenton, NJ 08625

Charles L. Smith III  
Senior Director of Government  
And Regulatory Affairs  
Comcast  
800 Rahway Avenue  
Union, NJ 07083

Timothy R. Oberleiton, DAG  
Attorney General's Office  
Division of Public Safety  
124 Halsey Street, 2nd Floor  
POB 45029-5029  
Newark, NJ 07101

Caroline Vachier, Chief, DAG  
NJ Attorney General's Office  
Division of Public Safety  
124 Halsey Street, 2nd Floor  
POB 45029-5029  
Newark, NJ 07101

Maria Novas-Ruiz  
Assistant Deputy Rate Counsel  
NJ Division of Rate Counsel  
140 East Front Street, 4th Floor  
P.O. Box 003  
Trenton, NJ 08625

Veronica Beke, DAG  
NJ Attorney General's Office  
Division of Public Safety  
124 Halsey Street, 2nd Floor  
POB 45029-5029  
Newark, NJ 07101

Kenneth J. Sheehan  
Bevan, Mosca & Giuditta, P.C.  
222 Mount Airy Road, Suite 200  
Basking Ridge, NJ 07920-2335