



Agenda Date: 6/22/18
Agenda Item: IVC

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

TELECOMMUNICATIONS

IN THE MATTER OF ALTEVA OF WARWICK, LLC)
MOMENTUM TELECOM, INC., AND MBS HOLDINGS,) ORDER
INC., FOR APPROVAL OF A TRANSFER OF)
CONTROL AND SECURITY TRANSACTION) DOCKET NO. TM18040398

Parties of Record:

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

BY THE BOARD:

On April 17, 2018, Alteva of Warwick, LLC ("Alteva of Warwick"), Momentum Telecom, Inc. ("Momentum"), MBS Holdings, Inc. ("MBS Holdings"), and Castle Intermediate Holdings, Inc. ("Castle Intermediate Holdings") (collectively, "Joint Petitioners"), submitted a Verified Petition with the New Jersey Board of Public Utilities ("Board") pursuant to N.J.S.A. 48:3-10, requesting approval, or other authority as may be required, to consummate a transaction whereby Castle Intermediate Holdings, by and through its wholly-owned subsidiary, Castle Merger Sub, Inc. ("Merger Sub"), will acquire ultimate control of MBS Holdings (corporate parent of Alteva of Warwick and Momentum) (the "Transaction"). Also in connection with the Transaction, and pursuant to N.J.S.A. 48:3-9, MBS Holdings is seeking approval of a financing transaction under which, inter alia, the current debt of MBS Holdings will be replaced with new debt and for which certain MBS Holdings assets, including Momentum Telecom, will serve as guarantors (the "Financing").¹ Following the closing, Warwick and Momentum will continue to offer the same services in New Jersey at the same rates, terms, and conditions.

¹ The Financing will extinguish the collateral and pledge obligations of Alteva of Warwick approved by the Board in Docket No. TF16121198. Petition of Warwick, LLC for Approval to Participate in a Revolving Credit and Term Loan as Participant and Guarantor, Docket No. TF16121198 (March 24, 2017). It is anticipated that a petition for authority for Alteva of Warwick to participate in this new Financing arrangement will be filed after closing of the Transaction.

BACKGROUND

Alteva of Warwick is a limited liability company established under the laws of the State of New York with its principal place of business located in Warwick, New York. Alteva of Warwick is the incumbent local exchange carrier ("ILEC") in West Milford, Vernon and Franklin Borough, New Jersey, where it serves approximately 3,000 business and residential customers.² Alteva of Warwick also provides competitive local exchange services to approximately 90 New Jersey customers outside its ILEC service territory. Alteva of Warwick also offers its local exchange customers broadband services (via xDSL), as well as a package of satellite video services via an arrangement with DirecTV. Alteva of Warwick is also the ILEC in the towns of Warwick, Goshen and Wallkill, New York where it serves an additional 5,000 customers.

Momentum is a corporation established under the laws of the State of Delaware with its principal place of business in Birmingham, Alabama. Momentum is authorized to provide competitive local exchange and interexchange telecommunications services throughout New Jersey.³ Momentum provides wholesale hosted Voice Over Internet Protocol ("VoIP") and unified communications services and serves as the wholesale "CLEC partner"⁴ and broadband system manager to Tier II and Tier III cable providers. Momentum currently supports more than 411 cable operators, broadband providers and reseller partners, manages nearly 1.2 million high-speed data modems and supports over 350,000 voice lines around the country. Momentum has approximately 800 customers in New Jersey and supports more than 12,000 voice lines in the state.

MBS Holdings is a Delaware corporation with its principal place of business in Birmingham, Alabama. Alteva of Warwick and Momentum are both wholly-owned indirect subsidiaries of MBS Holdings. Of MBS's direct shareholders, four entities own more than 10% of MBS Holdings: Big Bird, LLC (17.9%); Featheringill Investment Group, LLC (10.6%); Ramsay Management LLC (10.2%); and Pharrow Investment Group, LLC (13.9%). In addition, there are two individuals that own more than 10% of MBS Holdings: Elizabeth Pharo and Carolyn Featheringill.

Castle Intermediate Holdings is a Delaware corporation formed on March 1, 2018 for the purpose of consummating the proposed transaction and ultimately acquiring control of MBS Holdings and its subsidiaries, including Alteva of Warwick and Momentum. Castle Intermediate Holdings' parent entity is Castle Holding Company, LLC ("Castle Parent"), a Delaware limited liability company formed on March 1, 2018 for the purpose of holding the investment interests in

² See Warwick Valley Telephone Company for Authorization to Transfer Assets to Warwick Valley Telephone Restructuring Company, LLC and to Surrender its Certificate of Public Convenience and Necessity and; Petition of Warwick Valley Telephone Restructuring Company, LLC for (1) Issuance of a Certificate of Public Convenience and Necessity for Approval (II) of its Adoption of Warwick Valley Telephone Company's Plan for Alternative Regulation and Intrastate Tariffs and (III) Related Relief, Docket No. TM12090812 (Oct. 23, 2012). The Board was notified that Warwick Valley Telephone Restructuring Company LLC changed its name to "Alteva of Warwick, LLC" via letter dated November 22, 2013.

³ See Petition of Momentum Telecom, Inc. for Authority to provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE08090709 (Dec. 9, 2008).

⁴ E.g., Numbering Policies for Modern Communications, Notice of Proposed Rulemaking, Order and Notice of Inquiry, 28 FCC Rcd. 5842, ¶ 45 (2013).

Castle Intermediate Holdings of both: (i) investment funds managed by the professionals at Court Square Capital Partners ("Court Square"), a leading private equity firm; and (ii) members of MBS management. CSC Castle Holdings, L.P. ("CSC Castle Aggregator") is a holding company formed by Court Square on March 8, 2018 to hold the aggregate equity investments of certain Court Square investment funds in Castle Parent.⁵ The petition states that at closing, the funds will own 100% of the limited partnership interests in CSC Castle Aggregator and will indirectly own approximately 82%-96% of the equity of MBS and Momentum depending on the total participation by MBS's current management, which will not be known until closing.

According to the petition, Court Square is well-qualified to obtain control of MBS and Momentum. Court Square's management team has past experience investing in the telecommunications industry. Currently, Court Square controls Conterra Ultra Broadband Holdings, Inc. ("Conterra Holdings") and its regulated subsidiaries, including, but not limited to, Conterra Ultra Broadband, LLC ("Conterra") and Detel Wireless, LLC ("Detel"). Conterra provides backhaul and fronthaul transport for wireless carriers and access and broadband networks for K-12, healthcare, and government entities in nineteen states. Detel provides competitive local exchange and interexchange telecommunications services in Mississippi and Louisiana. Court Square and its affiliates do not currently offer any regulated telecommunications services in the State of New Jersey and are not affiliated with any other telecommunications carrier in the State of New Jersey.

DISCUSSION

Pursuant to an Agreement and Plan of Merger Agreement ("Merger Agreement") executed on March 10, 2018 among MBS Holdings, Castle Intermediate Holdings, Castle Merger Sub, Inc. ("Merger Sub") (a newly-formed, direct subsidiary of Castle Intermediate Holdings formed for the purpose of consummating the proposed transaction) and Big Mo, LLC (as representative for MBS Holdings' selling shareholders), Castle Intermediate Holdings will acquire a controlling interest in MBS Holdings and, thereby, indirect control of Alteva of Warwick and Momentum. Specifically, pursuant to the Merger Agreement, MBS Holdings will merge with and into Merger Sub, with MBS Holdings surviving the merger as a wholly-owned subsidiary of Castle Intermediate Holdings. As a result, Alteva of Warwick and Momentum will become indirect, wholly-owned subsidiaries of Castle Intermediate Holdings.

Petitioners state that the planned transaction will result in a change in the ultimate equity ownership of Alteva of Warwick and Momentum and that further, there will be no changes to Alteva of Warwick's or Momentum's operations that will occur as a result of the transaction. Further, Alteva of Warwick's and Momentum's existing management teams will stay intact following the transaction and will continue to actively manage the day-to-day operations of each company. Petitioners further assert that Alteva's and Momentum's rates, terms and conditions of service will not change as a result of the transaction, and Alteva and Momentum will continue to operate under the same names. As a result, the transfer of control will be seamless and virtually transparent to customers. Petitioners also state that Alteva of Warwick and Momentum will continue to provide uninterrupted service to its customers and therefore the Board's Mass

⁵ Court Square Capital GP III, LLC ("GP") is the sole general partner of the funds, and the sole managing member of CSC Castle Aggregator. GP is managed and controlled by a Board of Managers composed of the following Court Square investment professionals, all of whom are U.S. citizens: William Comfort, David Thomas, Michael Delaney, Joseph Silvestri, Ian Hight, John Weber, Christopher Bloise, Thomas McWilliams and John Civantos.

Migration rules, N.J.A.C. 14:10-12.1, et seq., do not apply. To the extent that the Board determines otherwise, Petitioners request a waiver from the notification and other requirements of the Mass Migration rules.

Upon completion of the Transaction, MBS Holdings and its subsidiaries expect to obtain debt financing. The existing credit facilities of MBS will be replaced with new debt in an aggregate amount of up to \$139 million. Of this amount, no more than \$124 million is expected to be drawn at closing. The new debt financing will consist of: (1) a senior secured first lien term note facility in an aggregate principal amount of \$96 million and a senior secured first lien revolving credit facility in an aggregate principal amount of \$15 million; and (2) a senior secured second lien term loan facility in an aggregate principal amount of \$28 million. The new debt may be modified, replaced, supplemented or refinanced from time to time. It will extinguish the collateral and pledge obligations of Alteva of Warwick approved by the Board in Docket number TF16121198.

The obligations of MBS Holdings under the new Credit Facilities will be secured, consistent with the Existing Credit Facilities, by a security interest in substantially all of the assets of MBS Holdings, Momentum, and the other guarantors, but specifically excluding Alteva of Warwick, including a pledge of all or substantially all of the capital stock or membership units in MBS Holdings, Momentum and all future and existing wholly-owned domestic subsidiaries of the borrower, subject in each case to the exclusion of certain assets and additional exceptions. Castle Intermediate Holdings and all future and existing wholly-owned domestic subsidiaries of the borrower (subject to certain exceptions), including Momentum, but specifically excluding Alteva of Warwick, will act as guarantors for the Credit Facilities. The guarantees and security interests granted to the lenders under the Credit Facilities will be consistent with the guarantees and security interest provided by Momentum and MBS's other subsidiaries under the Existing Credit Facilities.

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed this matter and by letter dated May 15, 2018, states that it "does not oppose the Board's grant of Joint Petitioners' requests in this filing." (Letter from Rate Counsel to the Board dated May 15, 2018, page 3).

DISCUSSION, FINDINGS AND CONCLUSIONS

In considering a transfer of control request, the Board shall evaluate the impact of acquisition 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. N.J.S.A. 48:2-51.1(a). 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, 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, the Board is satisfied that positive benefits will flow to customers based upon the record, and that the combined enterprise would not be able to exercise market power to raise prices above competitive levels or exclude competitors from the marketplace. The Board therefore **FINDS** that the proposed transaction will have little impact on competition. The Board additionally **FINDS** that there will be 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. The provision of service quality on competitive offerings is in the public interest.

As to the effect on employees, the Board **FINDS**, as the Petition states, that the proposed Transaction will not result in any change to Alteva of Warwick's or Momentum's management and that the Transaction and Financing will not negatively affect Alteva of Warwick's or Momentum's ability to fulfill their obligations to their employees. Board precedent requires companies to report headcount reductions in New Jersey greater than 15% for a 3-year period after the date of closing. See, In the Matter of the Verified Joint Petition of Broadview Network Holdings, Inc. et al., Docket No. TM10404333 (June 30, 2017). There is no reason to disturb Board precedent based on these facts. The Board, therefore, **FINDS** that Petitioners must notify the Board, providing a written explanation if there is a net loss of New Jersey employees of Petitioners that is greater than fifteen percent (15%) of its total employee headcount for a 3-year period after the date of closing.

Regarding implication of the Board's Mass Migration regulations, the Board **FINDS** that those Rules do not apply in this instance because Alteva of Warwick does not intend to depart its service territory. Alteva of Warwick will continue to provide uninterrupted service to its customers, and Castle Intermediate Holdings will not be acquiring the end users of Alteva of Warwick as contemplated in N.J.A.C. 14:10-12.2(a) and (b). Because the Transaction does not involve Mass Migration, a waiver of the Board's Mass Migration Rules, found at N.J.A.C. 14:10-12.1 et seq., is unnecessary.

As to the proposed financing arrangements, the Board **FINDS** that the proposed transaction will not have a negative impact on competition, the rates of current customers, or New Jersey employees. Therefore, after investigation and consideration of the record and information submitted in this proceeding, the Board **FINDS** that the financing arrangements are in accordance with the law and in the public interest, and **HEREBY AUTHORIZES** Petitioners to participate in financing arrangements up to an aggregate amount of \$139 million, and to take those actions necessary to effectuate such financing arrangements.

This Order is issued subject to the following provisions:

1. The Order is subject to Petitioners notifying the Board Secretary and the Office of Cable Television and Telecommunications, in writing, within five (5) days of the date of the closing of the proposed transaction.
2. 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.
3. 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.


This Order shall be effective June 25, 2018.

DATED: 6/22/18

BOARD OF PUBLIC UTILITIES
BY:

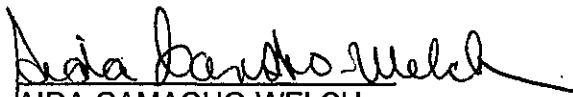

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COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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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HOLDINGS, INC., FOR APPROVAL OF A TRANSFER OF CONTROL AND SECURITY
TRANSACTION - DOCKET NO. TM18040398**

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