Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Joint Application of ODYSSEY ACQUISITION, LLC, EXTENET HOLDINGS, INC. and EXTENET SYSTEMS (CALIFORNIA), LLC (U6959C) to Authorize the Transfer of Indirect Control of EXTENET SYSTEMS (CALIFORNIA), LLC.	Application 15-08-003 (Filed August 3, 2015)

DECISION APPROVING TRANSFER OF INDIRECT CONTROL, INCLUDING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, OF EXTENET SYSTEMS-CALIFORNIA, LLC, TO ODYSSEY ACQUISITION, LLC

Summary

Pursuant to § 854 of the Public Utilities Code,[1] we approve the proposed transaction whereby Odyssey Acquisition, LLC, a Delaware limited liability company (Buyer), acquires indirect control of ExteNet Systems-California, LLC, a California limited liability company (ExteNet-CA), pursuant to the Agreement and Plan of Merger as described in the application.

This proceeding is closed.

1. Factual Background

On August 3, 2015, Odyssey Acquisition, LLC, a Delaware limited liability company (Buyer) and ExteNet Systems-California, LLC, a California limited

[1] All statutory references herein are to the California Public Utilities Code unless otherwise indicated.

liability company (ExteNet-CA) filed this Joint Application to Authorize the Transfer of Indirect Control of ExteNet-CA to Buyer. Buyer, Odyssey Merger Sub, Inc., a Delaware corporation and a wholly-owned Subsidiary of the Buyer (Merger Sub), ExteNet Holdings, Inc., a Delaware corporation (Company and together with the Merger Sub, the Constituents Corporations), and EHI Seller Rep, LLC, a Delaware limited liability company, solely in its capacity as the Representative of the Company Equityholders, entered into an Agreement and Plan of Merger dated as of July 17, 2015. As a result of the Agreement and Plan of Merger, Buyer will acquire all of the equity interests of Company, which will result in an acquisition by Buyer of indirect control of ExteNet-CA. Buyer and ExteNet-CA submit that the approval requested by their Joint Application is in the public interest and should be granted on an expedited basis. The parties are targeting closing of the Agreement and Plan of Merger within approximately 90 days of signing and no later than October 31, 2015.

Pursuant to the Agreement, Merger Sub will merge with and into the Company, whereupon the separate existence of Merger Sub will cease and the Company will be the surviving entity. Concurrently, and upon closing of the Agreement and Plan of Merger, the Company will be a direct wholly owned subsidiary of Buyer. Also, because ExteNet Systems, Inc., (ESI), a Delaware corporation will remain a direct wholly owned subsidiary of the Company, ESI will become an indirect wholly owned subsidiary of the Buyer.

On August 13, 2015, Buyer filed an Amendment to the Application to update the indirect ownership of Buyer. The Amendment did not substantively change the proposed indirect ownership of ExteNet-CA. Buyer is a holding company with no operations. ExteNet-CA is a wholly-owned direct subsidiary of ESI. ESI is a wholly-owned subsidiary of the Company.

ExteNet-CA is authorized in California to provide full facilities-based local exchange and interexchange telecommunications services.[2] ExteNet-CA designs, builds, owns and operates distributed networks for use by national and regional wireless service providers (WSP) in key strategic markets in North America. Using distributed antenna systems (DAS), small cells, Wi-Fi and other technologies, ExteNet-CA deploys distributed networks to enhance coverage and capacity and enable superior wireless service in both outdoor and indoor environments.

ExteNet-CA is a "carrier's carrier" providing point-to-point telecommunications services to its WSP customers, and does not provide services directly to retail consumers. Its distributed networks facilitate the WSPs' delivery of high-bandwidth data and voice service utilizing the customer's Federal Communications Commission (FCC) licensed spectrum across all technologies including 3G and 4G/LTE. ESI's networks are architected to easily and cost-effectively integrate future technologies and enable more efficient use of shared infrastructure and FCC licensed spectrum.

Applicants assert that the rates of ExteNet-CA will not be affected by the Agreement and Plan of Merger. Upon closing, ExteNet-CA's carrier customers will receive their existing services from ExteNet-CA at the same rates, terms, and conditions that currently apply.[3] According to Applicants, this deal will not

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[2] A Certificate of public convenience and necessity (CPCN) was originally granted to ClearLinx Network Corporation, which changed its name to ExteNet Systems, Inc. *See* Decision (D.) 06-04-063. ESI transferred its Certificate to ExteNet-CA by Advice Letter No. 4, which became effective April 24, 2007. ExteNet-CA has also obtained a Certificate to engage in construction. *See* D.11-10-039.

[3] Joint Application at 11.

result in any modifications to ExteNet-CA's existing tariffs or customer contracts and customer notification of the proposed change of control is not required because the Agreement and Plan of Merger does not involve a customer base transfer under Section 851, but instead is limited to an acquisition of indirect control governed by Section 854. They further assert that this transaction will serve the public interest, and have no adverse impact on the carrier customers of ExteNet-CA, as ExteNet-CA does not provide service to end-user customers, and the only change upon closing of the Agreement and Plan of Merger will be that Buyer will become the new indirect owner of ExteNet-CA. Moreover, they contend that the financial and managerial resources that Buyer brings will enhance the ability of ExteNet-CA to compete in the telecommunications marketplace.[4]

Buyer's principal executive office is located at 750 Park of Commerce Drive, Suite 200, Boca Raton, Florida, 33487. ExteNet-CA and the Company's principal executive offices are located at 3030 Warrenville Rd., Suite 340, Lisle, Illinois, 60532.

The Commission has received no protests to the Application.

2. Discussion

The primary standard by which the Commission reviews whether a transaction should be approved under Section 854(a), is whether the transaction will be "adverse to the public interest."[5]

In addition, the Commission has established that:

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[4] Joint Application at 11.

[5] *See* Decision (D.) 03-12-033 at 6; D.01-06-007 at 15.

> Where a company that does not possess a Certificate of Public Convenience and Necessity (CPCN) desires to acquire control of a company or companies that do possess a CPCN, the Commission will apply the same requirements to the acquiring company as would be applied to an initial applicant seeking a CPCN.[6]

The Commission has two major criteria for determining whether a CPCN should be granted, or transferred. An applicant who desires to operate as a provider of full facilities based local exchange and interexchange services must demonstrate that it has a minimum of $100,000 in cash or cash equivalent for operations of the company plus the costs of deposits to be paid to other carriers. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Buyer has submitted evidence of a Certificate of Deposit (CD) in the amount of $100,000 for purposes of satisfying the financial documentation requirements of D.95-12-056,[7] as well as an attestation under penalty of perjury by Mr. Brian McMullen, Buyer's Vice-President and Secretary, that Buyer will not redeem the CD until it matures on December 28, 2016, unless Buyer is released by the Commission.

The record shows that buyer is technically and managerially qualified to acquire and operate ExteNet-CA's existing telecommunications operations in California.[8]

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[6] *See* D.15-07-015 at 4.

[7] As recently clarified by D.14-11-004. *See* page 3.

[8] *See* Joint Application at 9, 11. Also, *see* Exhibit G to Joint Application, and Response to ALJ Ruling dated September 28, 2015.

ExteNet-CA is managed by the experienced management team of ESI. This management team will continue to manage the operations of ExteNet-CA supplemented with the additional management resources of Buyer. The Applicant explains that additional management resources of Buyer include the following owners: Digital Bridge Small Cell Holdings, LLC, a communications infrastructure investment platform based in Boca Raton, Florida, which owns interests in a broad range of communications infrastructure companies including Vertical Bridge and Mexico Tower Partners; Stonepeak Communication Holdings, LLC, a North America private equity firm focused on infrastructure investing, which invests primarily in businesses comprised of hard assets with lead marketing positions primarily in the following sectors: Energy, Power and Renewables, Transportation, Utilities, Water and Communications; and Delta-v Capital MRH, LP, an investment fund of Delta-v Capital, which is a private equity firm that invests in technology companies.

Applicants have submitted biographies of the key managerial personnel of ESI, including Ross W. Manire, President and Chief Executive Officer; Oliver M. Valente, Executive Vice President and Chief Operating Officer; and Tormod Larsen, Vice President and Chief Technology Officer. Also submitted were the biographies of Buyer's key managerial personnel such as Marc Ganzi, President and Treasurer of Odyssey Acquisition, LLC, CEO of Digital Bridge; Brian McMullen, Vice President and Secretary of Odyssey Acquisition LLC, and Managing Director of Stonepeak; Ben Jenkins, Chairman of Digital Bridge; Warren Roll, Principal of Digital Bridge; and Trent Vichie, Senior Managing Director and Co-Founder of Stonepeak.

Also, as part of the application , applicants for CPCN authority must disclose regulatory fines, penalties, and sanctions they have received and any

past bankruptcies. Here, Buyer and ExteNet-CA have verified under penalty of perjury that, to the best of their knowledge, neither Applicant, any of its affiliates, officers, directors, partners, agents, or owners (directly or indirectly) of more than 10% of Applicant, or anyone acting in a management capacity for Applicant: (a) held one of these positions with a company that filed for bankruptcy; (b) been personally found liable, or held one of these positions with a company that has been found liable, for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) been convicted of a felony; (d) been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of sections 17000 et seq., 17200 et seq., or 17500 et seq. of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) been found to have violated any statute, law, or rule pertaining to public utilities or other regulated industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

To the best of Applicant's knowledge, neither applicant, any affiliate, officer, director, partner, nor owner of more than 10% of Applicant, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the FCC or any law enforcement or regulatory agency for failure to comply with any law, rule or order.

There is nothing in the record which contradicts these assertions. Therefore, we find that the Buyer has demonstrated sufficient financial strength and managerial and technical expertise to satisfy Commission requirements for transfer of a CPCN.

We find that the Buyer's acquisition of indirect control of ExteNet-CA, including the CPCN held by ExteNet-CA, will serve the public interest. Following the Agreement and Plan of Merger, ExteNet-CA will continue to provide services at the same rates and on the same terms and conditions as are currently in effect. Buyer is overseen by a management team with substantial experience and expertise in the telecommunications field, and the transaction has been structured to assure an orderly transition.

Based on the terms of the proposed transaction, we find that approving this transaction is in the public interest. Since the transaction is in the public interest, it is also not adverse to the public interest. Thus, the proposed transaction fulfilled the requirements of § 854, and it is reasonable for the Commission to approve the transaction.

3. California Environmental Quality Act Compliance

The application proposes no new construction; and, thus, there is no possibility that the transaction will have a significant adverse impact on the environment. The transaction does not constitute a "project" under the California Environmental Quality Act, California Public Resources Code, Section 21000, et seq.[9]

[9] To the extent ExteNet-CA plans construction in the future, it will obtain prior Commission approval as it did in D.11-10-039 with respect to construction it undertook in Caltrans right of way in San Mateo County.

4. Motion for Confidentiality

With their application, the Applicants filed a Motion for Leave to File Confidential Materials Exhibits D (Agreement and Plan of Merger), E (Pro Forma Balance Sheet of Buyer), and F (Consolidated Financial Statements of the Company and Subsidiaries) Under Seal pursuant to Pub. Util. Code § 583 and Rule 42 of the Commission's Rules of Practice and Procedure and General Order 66-C(2.2)(b). Applicants assert that the information contained in Exhibit D, E and F is confidential and has not been made available to the public. Joint Applicants assert that in a competitive market, knowledge of a competitor's transaction arrangements, proprietary business information and its financial statements could be used to obtain an unfair business advantage. To be sure, while the information provided will assist the commission in its review of the merits of the Application, the general public has no direct or substantive interest in these exhibits. We have granted similar requests in the past and we agree that details of Exhibits D, E, and F, if disclosed, could place applicants at an unfair competitive disadvantage. Therefore, the motion is granted.

5. Categorization and Need for Hearing

In Resolution ALJ 176-3362 , dated August 27, 2015, the Commission preliminarily categorized this application as rate setting, and preliminarily determined that no hearings were necessary. As the Commission has received no protests to this application, a public hearing is not necessary.

6. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

7. Assignment of Proceeding

Carla J. Peterman is the assigned Commission and John A. Mikita is the assigned Administrative Law Judge (ALJ) and presiding officer in this proceeding.

Findings of Fact

1. Buyer is a Delaware Limited Liability Company.
2. ExteNet-CA is a California Limited Liability Company.
3. Buyer is a holding company with no operations.
4. ExteNet-CA is authorized in California to provide full facilities-based local exchange and interexchange telecommunications services.
5. Where a company that does not possess a California CPCN desires to acquire control of a company or companies that do possess a California CPCN, the Commission will apply the same requirements, to the acquiring company, as would be applied to an initial applicant seeking a CPCN.
6. ExteNet-CA is managed by the experienced management team of ESI. Upon closing, this management team will continue to manage the operations of ExteNet-CA supplemented with the additional management resources of Buyer.
7. Buyer has submitted evidence of a Certificate of Deposit (CD) in the amount of $100,000 for purposes of satisfying the financial documentation requirements, which is reasonably liquid and available and which is sufficient to cover operating expenses and any deposits third-party carriers may require.
8. Buyer has also submitted an attestation under penalty of perjury signed by its Vice-President and Secretary pledging not to redeem the CD until it matures on December 28, 2016, unless Buyer is released by the Commission.
9. Applicants represent that no other persons associated with or employed by Applicants as an affiliate, officer, director, partner, agent or owner of more than

10% of Applicant was previously associated with any company that filed for bankruptcy, or was sanctioned by the Federal Communications Commission or any state regulatory agency for failure to comply with any regulatory statute, rule or order.

10. Upon closing, ExteNet-CA's current customers will continue to receive service under the same rates, terms and conditions that currently apply.

11. No new construction is proposed in the application.

12. The transaction will serve the public interest because the financial and managerial resources that Buyer brings will enhance the ability of ExteNet-CA to compete in the telecommunications marketplace.

13. Approving the proposed transaction, as described in the Joint Application, is the relief requested by the Joint Applicants and this relief is not opposed by any party in this proceeding.

Conclusions of Law

1. Buyer has the financial resources and the technical capabilities that the issuance of a CPCN would require.

2. The transaction is in the public interest, meets the criteria of Section 854 of the Pub. Util. Code, and should be approved.

3. It can be seen with certainty that the proposed transfer will not have any adverse impact on the environment.

4. This proceeding is an uncontested matter.

5. The Joint Application should be approved.

6. ExteNet-CA will continue to be subject to the applicable Commission rules, decisions, General Orders, and statues that pertain to California public utilities.

7. Hearings are not necessary in this proceeding.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854, the indirect transfer of control of ExteNet Systems-California LLC to Odyssey Acquisition LLC is authorized in accordance with the documents and the Agreement submitted with Application 15-08-003.

2. In addition to all the requirements applicable to competitive local exchange carriers and interexchange carriers included in Appendices to Decision 06-04-063 and Decision 11-10-039, ExteNet Systems-California LLC , continues to be subject to all applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

3. The joint motion of Odyssey Acquisition LLC and ExteNet Systems-California LLC (jointly, Applicants) to file under seal Exhibits D, E and F is granted for a period of three years after the date of this order. During this three year period, this information shall not be publicly disclosed except on further Commission order or Administrative Law Judge ruling. If Applicants believe that it is necessary for this information to remain under seal for longer than three years, Applicants may file a new motion showing good cause for extending this order by no later than 30 days before the expiration of this order.

4. Application 15-08-003 is closed.

This order is effective today.

Dated _____, at Sacramento, California.