



State of New Jersey
DIVISION OF RATE COUNSEL
140 EAST FRONT STREET, 4TH FL
P.O. Box 003
TRENTON, NEW JERSEY 08625

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

Via Electronic Mail

August 22, 2022

Ms. Carmen Diaz,
Acting Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: Verified Petition of ZenFi Networks, LLC, Cross River Fiber, LLC
and BAI Communications US Holdings II LLC for Approval of a
Change of Control of ZenFi Networks, LLC and Cross River Fiber
LLC **BPU Docket No.: TM22070461**

Dear Board Secretary:

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed the above referenced Verified Petition filed by ZenFi Networks, LLC ("ZenFi" or "Transferor"), Cross River Fiber LLC ("Cross River Fiber"), Cross River Fiber NJ LLC ("Cross River Fiber NJ," and together with ZenFi and Cross River Fiber, "Licensees"), and BAI Communications US Holdings II LLC ("BAI" or "Transferee," and together with Licensees, "Petitioners"), dated July 28, 2022, which seeks the New Jersey Board of Public Utilities' ("Board") approval of a change of control ("Transaction") where Licensees will become indirect subsidiaries of BAI, which is majority owned and controlled by the Canada Pension Plan Investment Board ("CPPIB").¹ Kindly acknowledge receipt of the electronic filing for Rate Counsel's records.² Rate Counsel does not oppose Board approval of Petitioners' request in this matter.

¹ Petition at pp. 1 and Section III., pp. 3-4.

² Pursuant to e-filing procedures approved by the Board under Docket No. Docket No. EO20030254, dated March 19, 2020.

Parties

ZenFi Networks, LLC is a Delaware limited liability company, headquartered in Long Island City, New York and along with its subsidiaries Cross River Fiber LLC and Cross River Fiber NJ LLC are authorized to provide facilities-based and resold local and interexchange telecommunications services in New Jersey under Board dockets TE14080907, Order (issued Sept. 30, 2014); TE12040297, Order (issued June 18, 2012) and TE11050320, Order (issued July 14, 2011), respectively.³ Zenfi and Cross River Fiber, deploy to enterprise and carrier customers in New York and New Jersey fiber networks including dark and lit fiber transport, cellular fronthaul and backhaul, and wholesale services and deploy and operate distributed antenna systems and small cell infrastructure through fiber networks that extend to data centers, carrier hotels, commercial facilities, wireless access points, and financial exchanges.⁴

BAI, is a limited liability company headquartered in New York, New York, (majority owned and controlled by Canada Pension Plan Investment Board (“CPPIB”)), which through various subsidiaries and affiliates Mobilitie, Transit Wireless, and BAI Communications Holdings NJ LLC (“BAI NJ”) (collectively the BAI Communications Group) designs, builds, manages, and maintains wireless and wireline infrastructure solutions across the globe, including neutral host distributed antenna systems, small cell systems, and Wi-Fi networks and provides communications services worldwide.⁵ Specifically, BAI relies upon Mobilitie, LLC (which enables wireless connectivity for sports and entertainment venues, commercial buildings, hotels,

³ Petition, Section IA., at paragraphs 3-6 and *fn* 1.

⁴ Id., paragraphs 7-9. Petitioners note “Cross River Fiber NJ does not currently provide any regulated end-user telecommunications services in New Jersey.” Id., at paragraph 10.

⁵ Id., Section IB., paragraphs 11-13.

health care and educational facilities, and transportation systems, among other venues) and Transit Wireless, LLC (which builds and operates wireless networks and related infrastructure for transit systems, including the New York City subway, among other solutions).⁶ In New Jersey, BAI is authorized to provide facilities-based and resold competitive local exchange telecommunications services under its affiliate BAI NJ by Board Order dated March 9, 2022, in Docket TE21121250.⁷

Transaction

BAI (Transferee) will acquire ownership and control of ZenFi (Transferor) and its subsidiaries (all together, Licensees) under the Merger Agreement dated July 25, 2022.⁸ ZenFi will merge with and into Earth Merger Sub LLC, a limited liability company and an affiliate of BAI (“Merger Sub”), with ZenFi surviving the merger as an indirect subsidiary of BAI, and Cross River Fiber and Cross River Fiber NJ becoming indirect subsidiaries of BAI and all ultimately majority owned and controlled by CPPIB.⁹ See also, Exhibits 4 and 5, pre- and post-Transaction organizational charts included with the filing.

Rate Counsel notes that prior Board approval is required in any sale or merger, and Board approval must be based on the Board’s satisfaction that the proposed transaction will result in positive benefits and is in the public interest. *N.J.S.A. 48:2-51.1 et seq.*, and *N.J.S.A. 48:3-10*.

⁶ Petition, Section IB., at paragraph 14.

⁷ Id., paragraph 15. Petitioners note the transfer of that authority to another affiliate of the BAI Communications Group, Mobilitie, LLC, is the subject of another merger petition currently pending before the Board. See *Verified Petition of BAI Communications US Holdings NJ LLC for Approval of a Restructuring and Internal Merger*, Docket No. TM22060375 (filed Apr. 22, 2022). Id., *fn.* 2.

⁸ Id., Section II, paragraphs 16-17.

⁹ Id. See also, paragraph 1.

The filing provides information which Petitioners assert supports a finding of positive benefits and warrant approval of the transaction under *N.J.S.A. 48:2-51.1 et seq.*¹⁰ Petitioners assert the merger will yield only positive benefits including but not limited to: management, financial, and other resources newly made available to Licensees that will enhance their networks and services to the benefit of their customers; will not result in any discontinuance of service or change of provider for any customers, and it will not involve the assignment of any operating authority; will be seamless to customers, who will continue to receive the same services at the same rates, subject to the same terms and conditions, and in the same geographic areas as they do today and will not adversely affect competition because it will not result in any reduction in the number of competitors serving the market, so customers will continue to have access to the same competitive alternatives that they do today.¹¹

Rate Counsel acknowledges New Jersey's long-standing public policy to promote robust competition in the New Jersey telecommunications market. Rate Counsel recognizes that the promotion of robust competition should yield positive benefits in the form of expanding consumer choice in access to safe and reliable, innovative high-quality telecommunications services, at competitive and reasonable rates. Petitioners' filing asserts approval of the Transaction will ensure a stronger competitor in New Jersey's telecommunications marketplace and Rate Counsel concurs that competition is in the public interest.¹² Accordingly, Rate Counsel would not oppose a Board grant of approval, following the Board's determination that the

¹⁰ Petition, Section III, paragraph 18-28.

¹¹ *Id.*

¹² *Id.*, paragraphs, 21-24 and 27. *See also*, paragraph 2.

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contemplated Restructuring plan yields positive benefits to New Jersey customers and is in the public interest.

Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN,
DIRECTOR
NJ DIVISION OF RATE COUNSEL

/s/ Maria Novas-Ruiz

Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/td
c: Service List