

Supplemental Exhibit 4

Docket No. 17-2500-01
West Virginia Recommended Decision

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

Entered: November 29, 2017

CASE NO. 17-1496-T-PC

TELEQUALITY COMMUNICATIONS INC., AND
EDUCATION NETWORKS OF AMERICA, INC.,

Joint petition for consent and approval for an indirect change of Control of TeleQuality Communications, Inc., to Education Networks of America, Inc.; a motion for a Protective Order to Keep the Purchase Agreement confidential; and motion for Expedited treatment.

RECOMMENDED DECISION

This Recommended Decision consents to a transfer of control as set forth in the Application.

BACKGROUND

On October 20, 2017, TeleQuality Communications, Inc. (TeleQuality) and Education Networks of America, Inc. (ENA) (together Joint Applicants) requested Commission consent to a transaction that will indirectly transfer control of TeleQuality to ENA. After the Joint Applicants obtain all necessary regulatory approval, the corporate parent of TeleQuality will exchange its interest in TeleQuality for equity in the corporate parent of ENA. TeleQuality will continue to operate after the transaction under its existing authority with its current management. TeleQuality holds authority from this Commission to provide competitive intrastate facilities-based and resold telecommunications services throughout West Virginia. (TeleQuality Communications, Inc., Case No. 15-0235-T-CN (Recommended Decision Entered June 16, 2015, Final July 6, 2015).) TeleQuality, however, does not currently have any regulated intrastate telecommunications customers in West Virginia.

ENA provides a variety of high-capacity internet services to educational institutions and libraries. It focuses on institutions participating in the universal service support program known as E-rate. ENA does not have any customers in West Virginia.

The Joint Applicants asserted that the proposed transfer of control will not adversely impact existing customers, terms of service or the rates charged by TeleQuality. Instead, the transaction will enhance the ability of the Joint Applicants to compete in the telecommunications marketplace and is consistent with W.Va. Code §24-2-12. Therefore, the Joint Applicants requested Commission approval of the proposed transfer of control.

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Separately, the Joint Applicants requested that the Commission issue a protective order for the unredacted version of their purchase agreement filed with the Application. They asserted that public release of the unredacted agreement will be detrimental to them, but they did not file a supporting affidavit with the motion.

On November 8, 2017, Commission Staff recommended that the Commission approve the transaction as requested. Staff noted that TeleQuality reported \$14,242 generated in West Virginia in 2016. TeleQuality does not currently have any traditional intrastate telephone customers at this time. ENA is privately held, but is estimated to generate a total of \$100 million annually.

On November 20, 2017, the Joint Applicants filed a letter concurring with the Staff recommendation and requesting that the Commission approve the proposed transaction. They noted that the Federal Communications Commission (FCC) has issued a Public Notice announcing a streamlined interstate approval process for the transaction. The Public Notice from the FCC indicated that the corporate parent of TeleQuality will receive a cash payment for a portion of its equity contribution.

On November 21, 2017, the Commission referred this matter to its Division of Administrative Law Judges for a Recommended Decision on or before May 18, 2018.

DISCUSSION

Transfer of Control

W.Va. Code §24-2-12 requires public utilities to obtain consent from the Commission before entering into certain transactions including a transfer of control, merger or affiliated agreements. Under the statute, the Commission is authorized to consent to the proposed transaction without approving the terms and conditions, if the proposal is reasonable, does not adversely affect the public and no party is given an undue advantage. The Commission may also determine if a hearing is necessary. Here, the Joint Applicants have shown that the proposed indirect transfer of control as set forth in the Application meets the statutory test. Subject to the conditions set forth in this Order and the Joint Applicants obtaining all other necessary consents and approvals, it is reasonable to consent to the transfer of control as requested without hearing. Finally, the Joint Applicants will file a letter informing the Commission once they have consummated the transaction.

The Joint Applicants are reminded that prior consent and approval from the Commission pursuant to W.Va. Code §24-2-12 is required before utility assets may be transferred or any direct or indirect change of ownership of a majority of the common stock of any public utility organized and doing business in this State may be consummated. Commission approval of a transfer of control of a regulated telephone company does not in any way authorize a change in the services provided to the public or the rates charged for those services. Separate prior consent from the Commission is required before any such regulated changes are made.

Commission consent pursuant to W.Va. Code §24-2-12 is limited to the changes described in the Application. This grant of consent does not affect Commission authority to review the operations of the regulated entity and nothing in this approval should be deemed to affect its jurisdiction. If any further change in the ownership of TeleQuality, its subsidiaries or any underlying West Virginia assets is necessary as a result of a secured lien facility, revolving facility, pledges of the Joint Applicants, any other security instrument or any protections assumed incident to any financing arrangements, the Commission retains jurisdiction to examine any such conveyance prior to any change of ownership or disposition of assets. It expects additional filings to be promptly made regarding a proposed change in the operations, ownership or disposition of those assets.

Protective Order

The Joint Applicants filed a complete unredacted copy of their agreement under seal in support of the Application. They requested that the Commission maintain that information under seal, asserting that disclosure would subject them to a competitive disadvantage. The Joint Applicants, however, did not submit a supporting affidavit attesting to the underlying factual basis for their motion.

There is no need at present to make a final ruling on the protective treatment request in this matter. Instead, the Executive Secretary will hold the unredacted version of their agreement separate and apart from the remnant of this case file until the Commission receives and reviews a request for that information. By deferring consideration of the protective treatment request, the Commission is not taking any final position on the application of the West Virginia Freedom of Information Act, codified as W.Va. Code §29B-1-1 et seq. (WV FOIA) to the sealed document. The Joint Applicants, however, will file an affidavit fully supporting the request for a protective order with a factual basis within ten days of this Recommended Decision becoming a final Commission Order. (General Investigation Pursuant to W.Va. Code §24-2-7 into the Actions of WVAWC in Reacting to the January 9, 2014 Chemical Spill, Case No. 14-0872-W-GI (Commission Order, March 28, 2016) at 7, Verizon West Virginia Inc., Case No. 09-0861-T-PC (Commission Order, September 21, 2009) at 4.)

FINDINGS OF FACT

1. The Joint Applicants requested Commission consent to an indirect transfer of control of TeleQuality to ENA. (Application.)
2. ENA provides a variety of telecommunications services with a focus on libraries and educational institutions. (Id.)
3. Staff recommended approval of the proposed transfer of control. (November 8, 2017 Staff Memorandum.)

4. TeleQuality does not currently have any traditional telephone customers in West Virginia. (Id.)

5. The Joint Applicants requested a protective order to prevent public release of the unredacted version of their agreement, but did not file a supporting affidavit. (Motion for Protective Order.)

CONCLUSIONS OF LAW

1. It is reasonable to consent to the proposed indirect transfer of control because the terms of the transaction are reasonable, do not adversely affect the public and no party is given an undue advantage. (W.Va. Code §24-2-12.)

2. The Joint Applicants should inform the Commission once they consummate their transaction.

3. The Commission retains jurisdiction to examine any further change in the ownership of the regulated entity, its subsidiaries or underlying West Virginia assets. Additional filings with the Commission shall be made in sufficient time for the Commission to review any proposed transfers prior to any change in the operations of TeleQuality, its ownership or the disposition of any West Virginia assets.

4. The Executive Secretary will seal the material subject to the protective treatment request until the Commission receives and reviews a WV FOIA request for that information.

5. The Joint Applicants will file an affidavit supporting the request for a protective order within ten days of this Recommended Decision becoming a final Commission Order. (Case No. 14-0872-W-GI (Commission Order, March 28, 2016) at 7, Case No. 09-0861-T-PC (Commission Order, September 21, 2009) at 4.)

ORDER

IT IS THEREFORE ORDERED that, without approving the underlying terms and conditions thereof and subject to the Joint Applicants obtaining all other necessary consents and approvals, consent for the Joint Applicants to complete the transfer of control more fully described in the Application is granted.

IT IS FURTHER ORDERED that the Joint Applicants inform the Commission of the consummation of the transaction within five days thereof.

IT IS FURTHER ORDERED that prior Commission consent and approval is required before any utility assets may be transferred or any direct or indirect change of ownership of a

majority of the common stock of any public utility organized and doing business in this State may be consummated.

IT IS FURTHER ORDERED that if any change in the ownership of the regulated entity, its subsidiaries or any underlying West Virginia assets is necessary as a result of any secured lien facility, revolving facility, pledges of the Joint Applicants, any other security instrument or any other protections assumed incident to the financing arrangements, prior Commission consent and approval must first be obtained before any such change may be consummated.

IT IS FURTHER ORDERED that the request for permanent protective treatment of the unredacted purchase agreement is deferred until the filing and review of a request under WV FOIA. The Executive Secretary shall maintain the unredacted version of the sealed filing in its current condition, separate and apart from the rest of the file pending further Order.

IT IS FURTHER ORDERED that the Joint Applicants file a properly attested affidavit factually supporting the request for a protective order within ten days of this Recommended Decision becoming a final Commission Order.

IT IS FURTHER ORDERED that this case shall be removed from the Commission docket of open cases once this Recommended Decision becomes a final Commission Order.

The Executive Secretary is ordered to serve this Order upon the Commission and its Staff by hand delivery, upon all parties of record who have filed an e-service agreement with the Commission by electronic service and upon all other parties by United States Certified Mail, return receipt requested.

Leave is granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen days of the date of this Order. If exceptions are filed, the parties filing exceptions shall certify that all parties of record have been served the exceptions.

If no exceptions are filed, this Order shall become the Order of the Commission, without further action or order, five days following the expiration of the fifteen day time period, unless it is ordered stayed by the Commission.

Any party may request waiver of the right to file exceptions by filing an appropriate petition in writing with the Executive Secretary. No such waiver, however, will be effective until approved by order of the Commission.



Matthew J. Minney
Deputy Chief Administrative Law Judge

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