



STATE OF DELAWARE

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MEMORANDUM

TO: The Chairman and Members of the Commission

FROM: Joshua Bowman, Public Utility Analyst

DATE: March 1, 2016

SUBJECT: IN THE MATTER OF THE MERGER APPLICATION OF COMTECH COMMUNICATIONS SYSTEMS INC.

(FILED FEBRUARY 15, 2016). – PSC DOCKET NO. 16-0186

Application

On February 15, 2016, Comtech Telecommunications Corp. (“Comtech”) and TeleCommunication Systems, Inc. (“TCS”) (collectively, the “Applicants”), filed an application with the Delaware Public Service Commission (“PSC” or “Commission”) seeking approval under 26 Del. C. § 215 for an Agreement and Plan of Merger in which Comtech will acquire, through a merger of TCS with and into a wholly-owned subsidiary of Comtech, control of all TCS assets including all regulated telecommunications assets in Delaware and other jurisdictions.

Applicants

Comtech Telecommunications Corp.

Comtech is a Delaware corporation headquartered at 68 South Service RD, Suite 230 Melville, NY 11747. Comtech designs, develops, produces and markets innovative products, systems and services for the provision of advanced telecommunications solutions. Comtech conducts business through three complementary segments: telecommunications transmission, mobile data communications and RF microwave amplifiers. Comtech sells its products to a diverse customer base in the global commercial and government communications markets.

Comtech is a publicly-traded corporation on the NASDAQ Global Market under the ticker symbol CMTL. The only entity that holds more than ten percent (10%) of Comtech's equity is First Eagle Investment Management, L.L.C. (10.1%), a U.S. investment management company based in New York City that is an adviser to the First Eagle Funds.

Typhoon Acquisition Corp.

Typhoon Acquisition Corp. ("Merger Sub") is a Maryland corporation and wholly-owned subsidiary of Comtech that was newly formed by Comtech for the purpose of conducting a tender offer for outstanding shares of capital stock of TCS pursuant to the Agreement.

TeleCommunication Systems, Inc.

Telecommunication Systems, Inc. ("TCS") is a Maryland corporation headquartered at 275 West Street, Annapolis, MD 21401. TCS develops and delivers highly reliable and secure wireless communication technology. Customers use TCS' "mobile cloud" software functionality through connections to and from network operations centers. TCS conducts business with the U.S. federal government as a prime contractor under major technology contract vehicles, as well as state, local and foreign government entities.

NextGen Communications, Inc.

NextGen Communications, Inc. d/b/a Maryland NextGen Communications ("NextGen") is a wholly-owned subsidiary of TCS. NextGen is located at 275 West Street, Suite 400, Annapolis, MD 21401. NextGen holds a Certificate of Public Convenience and Necessity to operate in Delaware as a provider of competitive local exchange telecommunications services, granted by the Commission in Order 7856 on October 19, 2010. NextGen aggregates and transports emergency local, VoIP, telemetric, PBX, and mobile E9-1-1 traffic, manages and transmits location and calling number data, and provides call routing management for the delivery of emergency calls to Public Service Answering Points (PSAPs) throughout Delaware.

Transaction

On November 22, 2015 the Applicants entered into an Agreement and Plan of Merger ("Agreement") whereby Comtech agreed to purchase all outstanding shares of capital stock of TCS (the "Acquisition"). As a result of the Acquisition, Comtech will acquire control over all assets of TCS, including all regulated telecommunications assets of TCS's wholly-owned subsidiary, NextGen, located in Delaware and other jurisdictions.

Pursuant to the Agreement, Merger Sub commenced on December 7, 2015 a tender offer to purchase all of the outstanding shares of common stock of TCS for \$5.00 per share in cash (the "Offer"). If consummated, the Offer will be followed by the merger of Merger Sub with and into TCS (collectively with Agreement and Acquisition, now the "Transaction") with TCS, the holder of the FCC Licenses, as the surviving entity. As a result of this Transaction, Merger Sub will cease its separate corporate existence and TCS will be a wholly-owned subsidiary of Comtech.

Public Interest

The Applicants submit that the Transaction is in the public interest and will be conducted in a manner that will be transparent to NextGen's enterprise customers. The Transaction will not result in any interruption, immediate change in rates, terms or conditions, or immediate change of carrier for customers, and in no event will it result in the discontinuance, reduction, loss, or impairment of service to customers. The only change immediately following closing of the transaction from a customer's perspective is that NextGen's indirect ownership will change, with Comtech being its ultimate owner.

Following consummation of the proposed transaction, Comtech will continue to develop the technologies and services currently provided by TCS, which will benefit the existing customers that rely on TCS for the array of wireless communications products and services it provides, including the provision of transmission capacity using the facilities covered by the FCC Licenses. Thus, the Transaction will not adversely affect the operation of NextGen and there are no anticipated negative economic impacts.

Accordingly, the Applicants respectfully submit that the Transaction is for a proper purpose and will serve the public interest, convenience and necessity. The Applicants request this Transaction be approved as expeditiously as possible.

Request for Waiver

The Applicants have asked for a waiver of the 26 Del. C. §208 requirement to maintain a business location within the State of Delaware for the sole purpose of maintaining copies of books and business records for its Delaware operations because such a requirement would impose a significant burden and business expense on Comtech. Accordingly, Comtech respectfully requests permission to keep the books, records, accounts, papers and memoranda relating to its Delaware operations with the books and business records at its corporate offices. Comtech will maintain an authorized agent for service of process within the State of Delaware, and agrees to furnish to the Commission certified copies of its books, accounts, papers, records and memoranda relating to its Delaware operations, at its sole expense, as required by the Commission.

Staff Recommendation

Applications seeking approval of transfer of control by large multi-state competitive intrastate telecommunications providers technically come under the provisions of 26 *Del. C.* §215 because the companies are deemed to be public utilities. The Applicants have represented that the proposed Transaction is in accordance with the law, for a proper purpose, and consistent with the public interest. The Commission has previously allowed such applications to become effective by statutory approval without Commission action. The result seems appropriate under the circumstances. Staff, therefore, recommends that the Commission not act on this application. Under 26 *Del. C.* §215(d), the effect will be that the application is deemed to be approved by the Commission. Staff will also acquire verification from the Applicants that the proposed Transaction has been completed.

Lastly, Staff notes that the Applicants' request for a waiver of the 26 *Del. C.* §208 requirement to maintain a business location within the State of Delaware for the sole purpose of maintaining copies of books and business records for its Delaware operations was previously addressed and granted by the Commission in Order 7856.