

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA  
1325 G STREET, NW, SUITE 800  
WASHINGTON, DC 20005**

**ORDER**

**September 21, 2018**

**FORMAL CASE NO. TA 06-5, IN THE MATTER OF THE JOINT APPLICATION  
OF MLN TOPCO LTD., MITEL NETWORKS CORPORATION, AND MITEL  
CLOUD SERVICES, INC. F/K/A MITEL NETSOLUTIONS, INC. FOR  
APPROVAL TO TRANSFER CONTROL OF MITEL CLOUD SERVICES, INC.,  
TO MLN TOPCO LTD, Order No. 19683**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) dismisses the Joint Application of MLN TopCo Ltd. (“TopCo” or “Transferee”); Mitel Networks Corporation (“Mitel” or “Transferor”); and Mitel Cloud Services, Inc. (“MCSI” or “Licensee”) (collectively, “Applicants”), requesting approval of the transfer of control of MCSI to Transferee for lack of Commission jurisdiction.

**II. BACKGROUND**

2. On May 21, 2018, the Applicants filed a Joint Application requesting approval of the Transfer of Control of MCSI to TopCo.<sup>1</sup> On June 7, 2018, Commission staff requested by email that the Applicants clarify whether they own or control telecommunications facilities in the District of Columbia (and thus public utilities under District of Columbia law), and also whether MCSI had paid its assessments to the Commission and the Office of the People’s Counsel.<sup>2</sup> On June 29, 2018, the Applicants filed a Supplement stating that the parties to the transaction did not own or control telecommunications facilities in the District of Columbia, confirmed that MCSI had paid its assessments in 2017, and adding that it submitted a survey response for 2018.<sup>3</sup> No comments were filed on the Joint Application or Supplement.

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<sup>1</sup> *Formal Case No. TA 06-5*, In the Matter of the Joint Application of MLN TopCo Ltd., Mitel Networks Corporation, and Mitel Cloud Services, Inc. f/k/a Mitel NetSolutions, Inc. for Approval to Transfer Control of Mitel Cloud Services, Inc. to MLN TopCo Ltd, (“*Formal Case No. TA 06-5*”), filed May 21, 2018 (“Joint Application”).

<sup>2</sup> *Formal Case No. TA 06-5*, Request for Supplemental Response, filed June 7, 2018.

<sup>3</sup> *Formal Case No. TA 06-5*, Joint Application Supplement (“Supplement”), filed June 29, 2018.

**A. The Applicants****1) Mitel Networks Corporation (Transferor)**

3. The Applicants state that Mitel is a Canadian corporation and a global provider of cloud and on-site communications and collaboration solutions for business customers, serving more than 70 million end users around the world.<sup>4</sup> The Applicants assert that since 2011, Mitel has reoriented its business from an on-site or premise-based unified communications and telephony business to become a diverse global market leader in next-generation cloud and enterprise markets.<sup>5</sup> The Applicants represent that these solutions enable customers to realize significant cost benefits and to conduct business more efficiently and effectively by enabling enhanced communications, information sharing and collaboration within a business and with customers, partners and suppliers.<sup>6</sup>

**2) Mitel Cloud Services, Inc. (Licensee)**

4. According to the Applicants, MCSI is a Texas corporation and is a wholly owned indirect subsidiary of Mitel. MCSI is a reseller of local communications services; domestic and international long-distance services; calling card services; 800 services; dedicated data services; Internet, DSL, MPLS services and Web voice and videoconferencing; disaster recovery solutions; and network monitoring and management.<sup>7</sup> The Applicants represent that MCSI is licensed as a competitive local exchange and interexchange carrier throughout the United States, and registered as an interconnected VoIP provider and wireless/CMRS reseller in numerous states.<sup>8</sup> In the District of Columbia, MCSI was approved by the Commission to provide local exchange telecommunications services on October 4, 2007 in Order No. 14593.<sup>9</sup> MCSI is also a provider of interexchange, CMRS, and VoIP services in the District of Columbia. MCSI is also authorized by the FCC to provide domestic and international telecommunications services.<sup>10</sup>

**3) MLN TopCo Ltd. (Transferee).**

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<sup>4</sup> Joint Application at 1.

<sup>5</sup> Joint Application at 1-2.

<sup>6</sup> Joint Application at 2.

<sup>7</sup> Joint Application at 2.

<sup>8</sup> Joint Application at 2.

<sup>9</sup> Joint Application at 2; *Formal Case No. TA 06-5, In the Matter of the Application of Inter-Tel Netsolutions, Inc. to Provide Local Telecommunications Services in the District of Columbia*, Order No. 14593, rel. October 4, 2007.

<sup>10</sup> Joint Application at 2.

5. The Applicants state that TopCo as a Cayman Islands exempted company formed for the purposes of implementing the Transaction.<sup>11</sup> The Applicants go on to describe TopCo as a wholly owned subsidiary of Searchlight II MLN, L.P., a Cayman Islands exempted limited partnership and master aggregator of an investor group led by funds affiliated with Searchlight Capital Partners, L.P. (“Searchlight”).<sup>12</sup> The Applicants state that Searchlight is a leading private equity investment group and has worked successfully in partnership with leading businesses throughout North America and Europe.<sup>13</sup>

## **B. Description of the Transaction**

6. According to the Applicants, pursuant to an Arrangement Agreement on April 23, 2018, by and between Mitel, MLN AcquisitionCo ULC (“MLN”), and TopCo, MLN will acquire all of the issued and outstanding common shares in the capital of Mitel in an all-cash transaction valued at approximately \$2.0 billion, including Mitel’s net debt.<sup>14</sup> Subsequently, the Applicants represent that Mitel and MLN will amalgamate under Canadian law to form a new combined entity, Mitel Networks ULC (“New Mitel”), a British Columbia unlimited liability company.<sup>15</sup> The transaction involves the shares in Mitel’s U.S. subsidiaries being transferred from New Mitel to MLN US HoldCo LLC, a Delaware limited liability company.<sup>16</sup> As a result, the Applicants state at the closing of the Transaction, Licensee will become a wholly owned indirect subsidiary of TopCo through a number of intermediate holding companies.<sup>17</sup>

7. The Applicants state that after the Transaction closes, Robert Agnes, the current Director, Chairman and President of MCSI, will continue to serve in his existing role.<sup>18</sup> The Applicants contend that the Transaction will occur entirely at the holding company level and will have no adverse impact on Licensee’s customers.<sup>19</sup> As such, the Transaction will not result in service disruption, termination, or customer confusion. The Joint Application includes diagrams depicting the pre- and post-Transaction corporate ownership structure of Licensee and are appended at Exhibit A.<sup>20</sup>

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<sup>11</sup> Joint Application at 2.

<sup>12</sup> Joint Application at 2-3.

<sup>13</sup> Joint Application at 2-3.

<sup>14</sup> Joint Application at 3.

<sup>15</sup> Joint Application at 3.

<sup>16</sup> Joint Application at 3.

<sup>17</sup> Joint Application at 3.

<sup>18</sup> Joint Application at 3.

<sup>19</sup> Joint Application at 3.

<sup>20</sup> Joint Application at 3; Exhibit A.

### **C. The Applicants' Public Interest Statement**

8. The Applicants assert that the Transaction described herein will serve the public interest. Licensee will continue to be managed and operated by the same officers and personnel, but will be supplemented by management of Transferee. The Applicants assert that the Transaction will provide MCSI with access to Transferee and the Searchlight-managed investor group's financial and operational expertise, permitting MCSI to continue to provide unified communications solutions to its customers and to better compete in the telecommunications marketplace.<sup>21</sup> The Applicants claim that the Transferee and its affiliates will seek to build on MCSI's existing assets, support investment in new infrastructure and continue to offer innovative and high-quality services to existing customers.<sup>22</sup> The Applicants also claim that the proposed Transaction will have no adverse impact on customers and will not alter the manner of service delivery or billing.<sup>23</sup> The Transferee further intends that MCSI's existing management team will remain in place and that MCSI's managerial, technical and operational standards will be maintained. Lastly, the Applicants state that MCSI will continue to comply with existing contracts and tariffs, as applicable, subject to change in the ordinary course of business and in accordance with applicable law.<sup>24</sup>

## **III. COMMISSION DECISION**

### **A. Transfer of Control**

9. D.C. Code § 34-1001 sets forth the Commission's authority to review the transactions filed for Commission consideration and approval. In addition, 15 DCMR § 2511.2 provides the application requirements for entities seeking Commission approval for a corporate restructuring.<sup>25</sup> The first step in this process, however, is for the Commission to determine whether it has authority to review and approve an application for transfer of control or a corporate restructuring, in accordance with D.C. Code § 34-1001. If it determines that it has authority to review the transaction in accordance with D.C. Code § 34-1001, then the Commission will conduct an analysis of the application based on the

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<sup>21</sup> Joint Application at 4-5.

<sup>22</sup> Joint Application at 4-5.

<sup>23</sup> Joint Application at 4-5.

<sup>24</sup> Joint Application at 5.

<sup>25</sup> See 15 DCMR § 2511.2 (2015). Specifically, 15 DCMR § 2511.2 states: For any change of ownership or control involving a certificated local exchange carrier that must be approved by the Commission pursuant to D.C. Official Code § 34-1001 (2001), all of the entities involved in the transaction must file an application with the Commission at least sixty (60) days before the proposed closing date of the transaction.

requirements provided in 15 DCMR § 2511.2.<sup>26</sup> The relevant portion of D.C. Code § 34-1001 reads:

No franchise nor any right to or under any franchise to own or operate any public utility as defined in this subtitle . . . shall be assigned [or] transferred . . . nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer . . . or agreement shall have been approved by the Commission in writing.<sup>27</sup>

10. A “public utility” is defined under D.C. Code § 34-214 as, *inter alia*, a “telephone corporation” or a “telephone line.”<sup>28</sup> D.C. Code § 34-220 provides that a “telephone corporation” includes:

every corporation, company, association, joint-stock company or association, partnership, and persons, their lessees, trustees, or receivers . . . owning, operating, controlling, or managing any plant, wires, poles for the reception, transmission, or communication of messages by telephone, telephonic apparatus or instruments, or any telephone line or part of telephone line, used in the conduct of the business of affording telephonic communications for hire, or which licenses, lets, or permits telephonic communication for hire.<sup>29</sup>

11. D.C. Code § 34-221 states that a “telephone line” includes:

conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, and appliances, and all devices, real estate, franchises, easements, apparatus, fixtures, property, appurtenances, and routes used, operated, controlled, or owned by any telephone corporation to facilitate the business of affording telephonic

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<sup>26</sup> See 15 DCMR § 2511.2(d) (2015) stating the five standards an application for transfer of control or other type of corporate reorganization must meet in order to receive Commission approval. The five standards are: (1) how the proposed transaction will affect competition in the District of Columbia; (2) how the proposed transaction will affect universal service; (3) how the proposed transaction will affect public safety and welfare; (4) whether the proposed transaction will affect the quality of local telecommunications services; and (5) how the proposed transaction will affect consumer rights.

<sup>27</sup> D.C. Code § 34-1001 (2016).

<sup>28</sup> D.C. Code § 34-214 (2016).

<sup>29</sup> D.C. Code § 34-220 (2015).

communication for hire, or which licenses, lets, or permits telephonic communication.<sup>30</sup>

12. The Commission has interpreted D.C. Code §§ 34-1001, 34-214, 34-220 and 34-221 to mean that if a Competitive Local Exchange Carrier has facilities in the District of Columbia, then it can be classified as a public utility under the D.C. Code and therefore certain transactions, such as assignments or transfers, require prior Commission review and approval.<sup>31</sup> The Applicants represent in their Supplement that they have no facilities in the District.<sup>32</sup> Inasmuch as the entities in the Transaction have no facilities in the District, they do not meet the definition of a public utility. Because the Applicants do not meet the statutory definition of a public utility, there is no need for the Commission to analyze the merits of this transaction, in accordance with 15 DCMR § 2511.2. Consequently, the Commission dismisses the Joint Application of TopCo, Mitel and MCSI requesting approval of the transfer control of MCSI to TopCo for lack of Commission jurisdiction.

**THEREFORE, IT IS ORDERED THAT:**

13. The Joint Application of MLN TopCo Ltd., Mitel Networks Corporation, and Mitel Cloud Services, Inc., requesting approval for the transfer of control of Mitel Cloud Services, Inc. to MLN TopCo Ltd., is **DISMISSED** for lack of Commission jurisdiction.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**



**CHIEF CLERK:**

**BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**

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<sup>30</sup> D.C. Code § 34-221 (2015).

<sup>31</sup> See Formal Case No. 990, *In the Matter of Development of Local Exchange Carrier Quality of Service Standards for the District*, Order No. 13139, ¶ 22, rel. March 25, 2004; See also Formal Case No. 892, *In the Matter of Joint Application of CTC Communications Corp., Conversant Communications Resale, L.L.C., and Choice One Communications Resale, L.L.C. for Approval of Pro Forma Intra-Company Changes*, Order No. 16933, rel. October 12, 2012, citing Formal Case No. 968, *Joint Application of AT&T Corporation and Teleport Communications Group, Inc., for Approval of a Transfer of a Franchise*, Order No. 11532 at 5, rel. November 5, 1999, which provided the context for the Commission's authority to review certain transactions.

<sup>32</sup> Supplement at 1.