

**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 06-4, IN THE MATTER OF THE NOTICE OF THE
INDIRECT TRANSFER CONTROL OF MAGICJACK VOCALTEC LTD., AND
YMAX COMMUNICATIONS CORP., TO B. RILEY FINANCIAL, INC., Order No.
19685**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) accepts Notice of B. Riley Financial, Inc. (“B. Riley” or “Transferee”) and magicJack VocalTec Ltd. (“MJVT” or “Transferor,” and collectively with B. Riley, the “Parties”), of a merger transaction whereby B. Riley will acquire ultimate control of MJVT and its indirect wholly-owned subsidiary YMax Communications Corp. (“YMax”). Further, the Commission dismisses additional review of this Notice for lack of Commission jurisdiction.

II. BACKGROUND

2. On April 9, 2018, the Parties filed a Notice of Indirect Transfer of Control whereby B. Riley would acquire ultimate control of MJVT and its indirect wholly-owned subsidiary YMax.¹ The Parties state that the Notice is being provided for informational purposes only. On August 3, 2018, the Parties submitted a Supplemental Filing in response to the issue of whether the Parties involved in the transaction are public utilities.² In the Supplemental Filing, the Parties assert that they as a whole, and YMax in particular, do not own, operate, or control any telecommunications facilities in the District of Columbia and thus, should not be classified as public utilities.³ No comments on the Notice were received.

A. Description of the Parties

1. MJVT and YMax

¹ *Formal Case No. TA 06-4, In the Matter of the Notice of the Indirect Transfer Control of magicJack VocalTec Ltd., and YMax Communications Corp., to B. Riley Financial, Inc* (“*Formal Case No. TA 06-4*”), filed April 9, 2018 (“*Notice*”).

² *Formal Case No. TA 06-4, Supplement to Notice*, filed August 3, 2018 (“*Supplemental Filing*”).

³ Supplemental Filing at 1.

3. The Parties describe MJVT as a publicly traded company that is incorporated under the laws of Israel and is headquartered there.⁴ The Parties state that MJVT and its subsidiaries are a vertically integrated group of companies that offers Voice-over-Internet-Protocol (“VoIP”) services and related equipment.⁵ The Parties assert that MJVT invented the magicJack device, which plugs into the USB port on a computer or into a power adapter and a high speed Internet source, providing users with calling services for home, business, and travel. Also available, according to the Parties, are magicJack mobile apps, which are applications that allow users to make and receive telephone calls through their smartphones or devices.⁶

4. The Parties state YMax is a wholly-owned direct subsidiary of YMax Corporation (“YMax Corp.”), a Delaware corporation and wholly-owned direct subsidiary of MJVT. The Parties represent that YMax gives owners of the magicJack device the option of getting a phone number for the device to receive calls or porting their existing number and thereby enjoy related features of the service. The Parties add that YMax offers customers the option to purchase international minutes on a prepaid platform. The Parties assert, and Commission records confirm, that on April 25, 2006, the Commission issued Order No. 13928 in *Formal Case No. TA-06-4* authorizing YMax to provide resold and facilities-based local exchange telecommunications services in the District of Columbia.⁷

2. B. Riley

5. The Parties describe B. Riley as a publicly traded diversified financial services company that takes a collaborative approach to the capital raising and financial advisory needs of public and private companies and high net worth individuals.⁸ The Parties state that B. Riley’s headquarters are in California and has offices in major U.S. financial markets with over 850 employees. The Parties represent that B. Riley operates through several wholly-owned subsidiaries, including B. Riley Principal Investments, LLC (“BRPI”), a Delaware limited liability company, which engages in proprietary investments in other businesses.⁹

6. The Parties assert that B. Riley is well-qualified managerially, technically, and financially to own and control MJVT and YMax. According to the Parties, through

⁴ Notice at 1.

⁵ Notice at 1.

⁶ Notice at 2-3.

⁷ Notice at 1; *Formal Case No. TA 06-4, In the Matter of the Application of YMax Communications Corp., to Provide Local Telecommunications Services in the District of Columbia*, Order No. 13928, rel. April 25, 2006.

⁸ Notice at 2.

⁹ Notice at 2.

BRPI, B. Riley owns United Online, which offers Internet access services to consumers under the NetZero and Juno brands, as well as email, Internet security, web hosting services, and other communications-related services.¹⁰ The Parties also state that B. Riley and its subsidiaries are managed by top professionals with decades of expertise in the financial, technology, research, and communications sectors.

B. Description of the Transaction

7. According to the Parties, on November 9, 2017, MJVT, B. Riley, and B. Riley's wholly-owned indirect subsidiary B. R. Acquisition Ltd. ("Merger Sub") entered into an Agreement and Plan of Merger ("Agreement").¹¹ Pursuant to the Agreement, Merger Sub will merge with and into MJVT, with MJVT as the surviving corporation. The Parties assert that at the time of the Transaction, the currently issued and outstanding shares of MJVT will be cancelled and converted into the right of each shareholder to receive a cash payment.¹² As a result of the Transaction, MJVT will become a wholly-owned, direct subsidiary of a newly formed U.S. holding company ("NewCo"), which will be a wholly-owned direct subsidiary of BRPI. The Parties state that YMax will become a wholly-owned, indirect subsidiary of B. Riley through YMax Corp., NewCo, MJVT, and BRPI.¹³ The Parties represent that the completion of the Transaction is conditioned on obtaining required federal and state regulatory approvals, among other things.¹⁴ The Parties include in their filing, organizational charts illustrating the current and post-closing corporate structure of YMax as described herein and provided as Exhibit A.¹⁵

III. COMMISSION DECISION

A. Transfer of Control

8. 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.¹⁶ The first step in this process, however, is for the Commission

¹⁰ Notice at 2.

¹¹ Notice at 2.

¹² Notice at 2.

¹³ Notice at 2.

¹⁴ Notice at 2.

¹⁵ Notice at 3.

¹⁶ 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.

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 requirements provided in 15 DCMR § 2511.2.¹⁷ 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.¹⁸

9. A “public utility” is defined under D.C. Code § 34-214 as, *inter alia*, a “telephone corporation” or a “telephone line.”¹⁹ 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.²⁰

10. 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,

¹⁷ 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.

¹⁸ D.C. Code § 34-1001 (2016).

¹⁹ D.C. Code § 34-214 (2016).

²⁰ D.C. Code § 34-220 (2015).

controlled, or owned by any telephone corporation to facilitate the business of affording telephonic communication for hire, or which licenses, lets, or permits telephonic communication.²¹

11. 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.²² In their Supplemental Filing, the Parties clarified that neither they nor YMax own, operate, or control any telecommunications facilities in the District of Columbia, adding that, although YMax is authorized to provide facilities-based intrastate services in the District of Columbia, it does not currently provide any such services pursuant to that authorization.²³ Inasmuch as the Parties have no facilities in the District, the Parties do not meet the definition of a public utility. Because the Parties 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 will accept Notice of the transfer of control of MJVT and its indirect wholly-owned subsidiary, YMax, to B. Riley, and dismiss further review of the filing for lack of Commission jurisdiction.

THEREFORE, IT IS ORDERED THAT:

12. The Notice of the transfer of control of magicJack VocalTec Ltd and its indirect wholly-owned subsidiary, YMax Communications Corp., to B. Riley Financial, Inc., is accepted and further review of the Notice is **DISMISSED** for lack of Commission jurisdiction.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

²¹ D.C. Code § 34-221 (2015).

²² 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.

²³ Supplemental Filing at 1.