



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF LEXENT)
METRO CONNECT, LLC FOR APPROVAL TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE09070564

(SERVICE LIST ATTACHED)

William K. Mosca, Jr. Bevan, Mosca, Giuditta & Zarillo, P.C. Watchung, New Jersey - for
Petitioner

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the Federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated July 27, 2009, Lexent Metro Connect, LLC ("Petitioner" or "Lexent") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide both resold and facilities-based local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a sworn affidavit with substantiation for confidential treatment in accordance with the Board's rules for determining confidentiality, N.J.A.C. 14:1-12.1 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Lexent is a limited liability company organized under the laws of the State of Delaware. Lexent is a wholly-owned subsidiary of Lexent, Inc. Hugh O'Kane Electric Company, Inc., an electrical contracting company and an affiliate of Lexent is also 100% owned and controlled by Lexent, Inc. Petitioner's principal offices are located at 90 White Street, New York, New York 10013.

Petitioner has submitted copies of its Certificate of Formation and Good Standing from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Limited Liability Company. Petitioner currently holds franchises to provide Local High-Capacity and Mobile Telecommunications Services, which were granted on August 22, 2002 and February 8, 2008, respectively, within the city of New York. Petitioner offers dark fiber, fractional dark fiber and interconnection to third party carriers in the States of New York and New Jersey. The Company states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal

proceedings. Petitioner has a joint use license agreement with Verizon New Jersey, Inc. ("VNJ") that provides the company with access to VNJ's poles, ducts, conduits and right-of-ways and enables Petitioner to install and provide dark fiber and related dark fiber services. The company has not commenced negotiations to enter into an interconnection agreement to provide lighted services with any incumbent local exchange carriers but plans to execute such agreement necessary before undertaking the actual provision of these services to end users.

Petitioner seeks authority to provide resold and facilities-based competitive local exchange and interexchange telecommunications services to both residential and business customers in the State of New Jersey by utilizing owned and leased facilities from VNJ. Petitioner and its predecessor companies have been continuously involved in the construction, operation and maintenance of fiber facilities in the New York metropolitan area since 1985. Petitioner has constructed facilities for, among others, Teleport Communications Group, now part of A T & T Local Services, Metropolitan Fiber Services, the City of New York and Level 3 Communications. Petitioner currently offers dark fiber, fractional dark fiber and interconnection to enterprise customers requiring connectivity between business operations and data centers in New Jersey and New York City. Petitioner owns and controls approximately twelve (12) miles of owned and leased fiber in the Newark and Weehawken areas connecting to Petitioner's hub at both ends. Petitioner is in the process of constructing a fifteen (15) mile ultra low latency metro fiber ring connecting strategic and collocation facilities located in Weehawken, North Bergen, Secaucus and Newark. The company states that an initial offering will be made to the enterprise and carrier customers located in Newark and Weehawken and in municipalities along the fiber ring being constructed to connect locations in the aforementioned four (4) towns. Applicant's future plans include further expansion of its fiber facilities to include more enterprise customer operating and data center locations in New Jersey and the offering of lit fiber-based services in all areas nearby to its deployed fiber. Petitioner anticipates that in the future it will provide a range of lighted fiber services, including private lines, end-user voice and data applications, including a full range of vertical features and functions such as call waiting and forwarding, conference calling, emergency services, etc. Petitioner maintains a toll-free number for customer service inquiries. Petitioner will file a proposed tariff with the Board.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located in New York, New York. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Lexent states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the

professional biographies of its key personnel, who, according to Lexent, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the Federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that "[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. §253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. §253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's findings that "competition will promote efficiency, reduce regulatory delay, and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Lexent's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout the State of New Jersey.

The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52 the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board. However, Petitioner won't be relieved from its responsibility to file an Annual Report and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year and payment of annual assessment to both the Board and the New Jersey Division of Rate Counsel.

The Board HEREBY ORDERS that:

- 1) Petitioner shall file its tariff with the Board.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner shall be subject to a penalty of \$5.00 for each day thereafter until such report is filed.

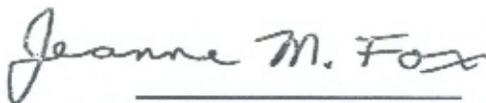
- 3) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 11/10/09

BOARD OF PUBLIC UTILITIES
BY:



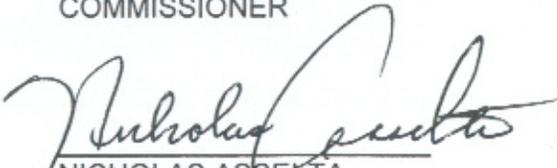
JEANNE M. FOX
PRESIDENT



FREDERICK F. BUTLER
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



NICHOLAS ASSELTA
COMMISSIONER



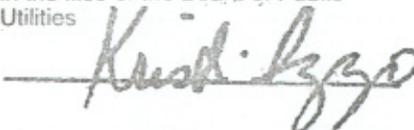
ELIZABETH RANDALL
COMMISSIONER

ATTEST:



KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



IN THE MATTER OF THE PETITION OF LEXENT METRO CONNECT, LLC
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE09070564

SERVICE LIST

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