Agenda Date: 1/12/05
Agenda Item: 8A

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

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF BCN TELECOM, INC. FOR APPROVAL TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW JERSEY	)	ORDER

DOCKET NO. TE04040254

(SERVICE LIST ATTACHED)

BY THE BOARD[1]:

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 April 9, 2004, BCN Telecom, Inc. ("Petitioner" or "BCN") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold local exchange and interexchange telecommunications services in the State of New Jersey. Petitioner has submitted its financial information under seal and has included 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 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

BCN is a privately held corporation organized under the laws of the State of New Jersey. On December 12, 2003, Telecom Acquisition, LLC, BCN's holding company purchased NUI Telecom, Inc. ("NUITel") from NUI Corporation, its parent company. Effective February 16, 2004, the company changed its corporate legal name from NUI Telecom, Inc. to BCN. Petitioner's principal offices are located at 550 Route 202/206, Bedminster, New Jersey 07921.

Petitioner has submitted copies of its Certificate of Amendment of Amended and Restated Certificate of Incorporation and Certificate in Good Standing from the State of New Jersey. According to the Petition, BCN was formed to provide facilities-based and resold local exchange and interexchange telecommunications services throughout New Jersey. Petitioner states that NUITel (n/k/a BCN) has filed a Resale Acknowledgement Letter to provide interexchange and local

[1] *Commissioner Connie O. Hughes recused herself on this matter due to a potential conflict of interest.*

services in New Jersey that was accepted for filing on October 23, 2001. Petitioner is authorized to provide interexchange service in the 48 contiguous states and Hawaii and local service in Delaware, Florida, Georgia, Maryland, Massachusetts, Maine, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania and Tennessee. Petitioner states that there have been no civil or criminal proceedings against the company in any jurisdiction and that its request for authority to provide telecommunications service has not been denied or revoked in any state.

Petitioner seeks authority to provide facilities-based and resold local exchange and interexchange telecommunications services to both business and residential customers throughout the State of New Jersey. Petitioner states that initially it will resell and/or provide local exchange services utilizing Unbundled Network Elements ("UNE") to its end user customers and that as market conditions warrant, it may augment its service offerings to include some facilities-based services. Petitioner states that it will employ a combination of its own equipment and facilities purchased from others entities and that it will combine switchless resale, leasing of local loops in conjunction with company owned switching, and/or purchasing UNE from Verizon in providing the proposed services. Petitioner's resold and facilities-based/UNE platform services may include, but are not necessarily limited to, basic telephone exchange, data, internet, digital subscriber line, access, call waiting and forwarding, speed dialing, distinctive ringing, three-way calling, operator, 911 and 911E, directory listing, third party and local calling and per use services such as call return and call redial to business and residential customers. Petitioner has no current plans to install facilities in the State of New Jersey for the provision of local exchange service and if it decides to install such facilities in the future, it will probably use the similar configuration of equipment used by most incumbent local exchange carriers. Petitioner states that it will file a tariff with the Board and that it maintains a toll-free number for its customer service inquiries.

Petitioner requests a waiver of N.J.A.C. 14:1-4.3, which requires that books and records be maintained in accordance with the Uniform System of Accounts ("USOA"). 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. 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, BCN 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 BCN, 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)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 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 BCN'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 telecommunications services throughout New Jersey subject to its filing a tariff with the Board. The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board.

The Board HEREBY ORDERS that:

1) Petitioner file its tariff for Board approval.

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. 48:2-59 and 48:2-60, 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 requirement that the Petitioner maintain its books and records in accordance with USOA. 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.

DATED: 1/13/05

BOARD OF PUBLIC UTILITIES
BY:

JEANNE M. FOX
PRESIDENT

FREDERICK F. BUTLER
COMMISSIONER

JACK ALTER
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 VERIFIED PETITION OF BCN TELECOM, INC. FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW JERSEY

DOCKET NO. TE04040254

SERVICE LIST

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