Agenda Date: 1/28/09
Agenda Item: IA

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 GLOBAL CAPACITY GROUP, INC. FOR APPROVAL TO PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES THROUGHOUT THE STATE OF NEW JERSEY	)))	ORDER DOCKET NO. TE08100934

(SERVICE LIST ATTACHED)

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 October 21, 2008, Global Capacity Group, Inc. ("Petitioner" or "Global Capacity") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based Unbundled Network Element ("UNE") local exchange telecommunications services throughout the State of New Jersey.

Global Capacity is a privately held corporation organized under the laws of the State of Texas. Global Capacity is a wholly owned subsidiary of Capital Growth Systems, Inc. ("CGSI") d/b/a Global Capacity. CGSI is a publicly-traded corporation that delivers telecom logistics solutions to a global client set consisting of systems integrators, telecommunications companies, and enterprise customers. Petitioner's principal offices are located at 500 West Madison Street, Suite 2060, Chicago, Illinois 60661.

Petitioner has submitted copies of its Certificate of Existence from the State of Texas and its New Jersey Certificate of Good Standing and Application for Certificate of Authority to operate as a Foreign Corporation. Petitioner has filed a Resale Acknowledgement Letter to provide resold local exchange and interexchange telecommunications services in the State of New Jersey, however, to date it has not commenced providing any telecommunications services. Petitioner is authorized to provide and is currently providing local exchange and interexchange telecommunications services in Alabama, Georgia, Hawaii, Idaho, Iowa, Kentucky, Maine, Michigan, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Dakota, Vermont, West Virginia, Wisconsin and Wyoming. Petitioner is also authorized to provide local exchange and interexchange telecommunications

services in Arkansas, Florida, Illinois, Indiana, Kansas, Massachusetts, North Carolina, Oregon and Washington and is in the process of obtaining such authority throughout the United States. Petitioner 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 not commenced negotiations to enter into an interconnection agreement with any Incumbent Local Exchange Carriers ("ILEC").

Petitioner seeks authority to provide resold and facilities-based UNE local exchange telecommunications services to both residential and business customers in the State of New Jersey. Petitioner states that it will initially resell and/or provide Local Exchange Services ("LES") utilizing UNE to its end user customers and as market conditions warrant may augment its service offerings to include some facilities-based services. Petitioner will combine switchless resale, leasing of local loops in conjunction with company owned switching, and/or purchasing UNE from Verizon – New Jersey and other carriers. Petitioner plans to provide basic telephone exchange, data, internet, digital subscriber line, access, call waiting and forwarding, speed dialing, distinctive ringing, three-way calling, operator services like 911 and E911, directory listing, third party calling arrangement, local calling and per use services such as call return and redial services to both residential and business customers throughout the State of New Jersey. Petitioner will rely upon the managerial and technical expertise of the ILEC and facilities-based interexchange carriers which have been certified and deemed technically and managerially able to provide exchange services by the Board. Petitioner has no current plans to install facilities in the State of New Jersey for the provision of LES. 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 office located in Chicago, Illinois. 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, Global Capacity 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 Global Capacity, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

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 Global Capacity'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.

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.

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: 1/28/09

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 GLOBAL CAPACITY GROUP, INC.
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT
THE STATE OF NEW JERSEY

DOCKET NO. TE08100934

SERVICE LIST

Petitioner's Contact Person:

Joanne Solis, Manager
Customer Advocate & Regulatory Contact
Global Capacity Group, Inc.
500 West Madison Street, Suite 2060
Chicago, Illinois 60661

Petitioner's Attorney:

Lance J. M. Steinhart, Esq.
Lance J. M. Steinhart, PC
Attorneys at Law
1720 Windward Concourse
Suite 250
Alpharetta, Georgia 30005

Public Advocate:

Stefanie A. Brand, Esq.
Director
Division of Rate Counsel
Department of Public Advocate
31 Clinton Street, 11th Floor
PO Box 46005
Newark, NJ 07101

Deputy Attorney General:

Jessica L. Campbell, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
PO Box 45029
Newark, NJ 07102

Board's Staff:

Dennis J. Moran, Director
Division of Audits
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102