



Agenda Date: 4/8/08

Agenda Item: IA

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

**TELECOMMUNICATIONS**

IN THE MATTER OF THE PETITION OF )  
BANDWIDTH.COM CLEC, LLC FOR AUTHORITY TO )  
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES )  
THROUGHOUT THE STATE OF NEW JERSEY )

ORDER

DOCKET NO. TE08020078

(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 letters dated February 5, 2008, Bandwidth.com CLEC, LLC

("Bandwidth") has filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting a Certificate of Public Convenience and Necessity to provide 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 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Bandwidth is a limited liability company organized under the laws of the State of Delaware. Bandwidth is a subsidiary of Bandwidth.com, Inc., a Delaware S Corporation providing voice and data services. Petitioner's principal offices are located at 4001 Weston Parkway, Suite 100, Cary, North Carolina 27513

Petitioner has submitted a copy of its Certificate of Formation from the State of Delaware and a Certificate of Authority to Conduct Business in the State of New Jersey as a Foreign Limited Liability Company. According to the petition, Bandwidth was formed to provide resold and facilities-based local exchange and interexchange telecommunications services to both business and residential customers throughout the State of New Jersey. Petitioner is currently authorized to provide telecommunications services in the State of California, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, Texas, Vermont, Washington and Wisconsin. Petitioner is in the process of obtaining similar authority to provide telecommunications services

in all other states. Petitioner is also authorized by the Federal Communications Commission ("FCC") to provide international and domestic interstate telecommunications services as a non-dominant carrier. 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 criminal proceedings. Petitioner is in the process of reviewing an interconnection agreement for opt-in with Verizon, New Jersey Inc.

Petitioner seeks authority to provide facilities-based and resold local exchange and interexchange telecommunications services to and from all points to both residential and business customers throughout the State of New Jersey. Petitioner initially intends to provide services only to business customers in the areas served by Verizon – New Jersey and Embarq and does not plan to provide service in areas of any small or rural local exchange carriers. However, Petitioner seeks statewide authority so that it may expand into other service areas as market conditions warrant and as additional service areas become open to competition. Petitioner primarily intends on serving business customers throughout New Jersey for the next five (5) years although it may target residential customers as well. Petitioner states that it will offer basic local exchange, custom calling features and interexchange toll services including toll free services to both business and residential customers in New Jersey. Petitioner maintains a toll-free number for customer service inquiries and 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 Cary, North Carolina. 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, Bandwidth 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 Bandwidth, 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, as long as Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. 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 Bandwidth'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 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:

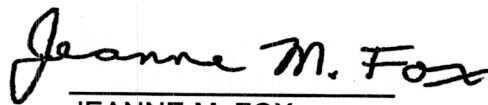
- (1) Petitioner file its tariff with the Board.
- (2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file 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.

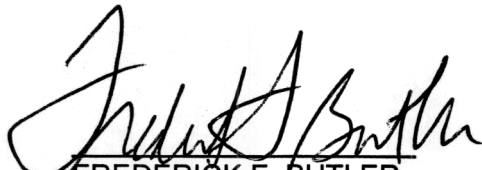
On or before February 1<sup>st</sup> of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial 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 with 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: 4/9/08

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

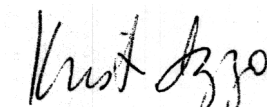
  
FREDERICK F. BUTLER  
COMMISSIONER

  
JOSEPH L. FIORDALISO  
COMMISSIONER

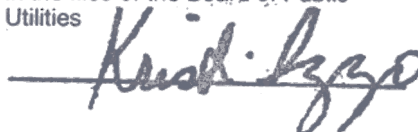
  
CHRISTINE V. BATOR  
COMMISSIONER

  
NICHOLAS ASSELTA  
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 BANDWIDTH.COM CLEC, LLC, FOR AUTHORITY  
TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES THROUGHOUT THE STATE OF NEW JERSEY

DOCKET NO. TE08020078

SERVICE LIST

1. Petitioner's Contact Person:

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4. Public Advocate:

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2. Petitioner's Attorney:

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3. Board's Staff:

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