



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 SERVICE)	ORDER
ELECTRIC TELEPHONE COMPANY, LLC FOR)	
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND)	
INTEREXCHANGE TELECOMMUNICATIONS)	
SERVICES WITHIN THE STATE OF NEW JERSEY)	DOCKET NO. TE05110972

(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 November 14, 2005 and November 8, 2007, Service Electric Telephone Company, LLC ("Petitioner" or "SET") filed an initial and amended Petition respectively, with the New Jersey Board of Public Utilities ("Board"), requesting authority to provide all forms of both switched and dedicated, resale and facilities-based, local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal along with 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.

SET was initially organized as a privately held corporation under the laws of the State of Pennsylvania. On December 8, 2003, pursuant to Case No. A-310691 F0003, SET was converted to a Limited Liability Company. Ironton Telephone Company ("ITC") and Service Electric Cable TV, Inc., ("SECTV") each holds a 50% ownership interest in SET. ITC provides telecom service, while SECTV provides cable service in the State of Pennsylvania. Petitioner's principal offices are located at 4242 Mauch Chunk Road, Coplay, Pennsylvania 18037-9608.

Parent/Subsidiary Relationship:

Petitioner states that it has no subsidiaries and that neither SET, ITC nor SECTV own any telephone network facilities in New Jersey. SECTV, one of the co-owners, is commonly owned along with Service Electric Cable TV of Hunterdon, Inc. ("SEC-Hunterdon") by a third entity, Service Electric Television, Inc. Petitioner states that SEC-Hunterdon does not own any telephone network facilities in New Jersey but they do own cable television facilities that are suitable for providing an unregulated retail Voice Over Internet Protocol ("VOIP") service in Hunterdon and Warren Counties. Petitioner plans to sell its wholesale telecommunications services to SEC-Hunterdon and to any other owner of facilities in New Jersey that are suitable

for providing unregulated retail VOIP services to end users. Service Electric Cable TV of New Jersey and SEC-Hunterdon, are two cable service providers in New Jersey that are regulated entities.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Pennsylvania and its New Jersey Certificate of Authority to Operate as a Foreign Limited Liability Company. According to the Petition, SET was formed to provide all forms of both switched and dedicated, resale and facilities-based, local exchange and interexchange telecommunications services within the State of New Jersey. Petitioner has been authorized to provide resold and facilities-based local exchange and interexchange telecommunications services in the State of Pennsylvania since 1998. Petitioner has long had interconnection agreements with Verizon and Embarq in Pennsylvania and has established business relationships with them. Petitioner has entered into a lease agreement with Level 3 Communications to provide its service in the Hunterdon area and is currently engaged in negotiations to enter into an interconnection agreement with Verizon New Jersey, Inc., Embarq New Jersey (formerly Sprint) and Warwick Valley Telephone Company to provide telecom services to the rest of New Jersey. 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 subject of any criminal proceedings.

Petitioner seeks authority to provide a full range of both switched and dedicated, resale and facilities-based, local exchange and interexchange telecommunications services to both residential and business customers in the State of New Jersey. Petitioner is primarily focused on providing such services in the service areas of Verizon-New Jersey and Embarq but is nevertheless requesting statewide authority in the event opportunities arise in areas served by another Incumbent Local Exchange Carrier ("ILEC").

Petitioner expects to enter the New Jersey market by providing the following regulated and non-regulated services.

(A) **Regulated Services:**

- **Provision of Wholesale Telecommunications Services to Unregulated VOIP Providers**

Petitioner states that pursuant to Section 251 and 252 of the Federal Telecommunications Act of 1996, it intends to function as a common carrier and offer regulated wholesale competitive local exchange carrier/retail VOIP telecommunications services to providers of unregulated VOIP service who own their own facilities reaching end users' premises. Thus, Petitioner proposes to provide regulated telecommunications services in New Jersey. Petitioner states that its services will include wholesale communications, switching, access line, interconnection with Public Switch Telephone Networks, including ILEC and other communications providers, directory assistance, Operator and 911 services.

- **Provision of Services Using ILEC Facilities**

Petitioner states that it also expects to provide telecommunications services through the resale of ILEC facilities under Section 251(b)(1) and 251(c)(4) of the Federal Telecommunications Act or the leasing of ILEC facilities as unbundled network elements under Section (c)(3) of the Act. Petitioner further states that this entry into the market is expected to be used to fill gaps in areas where a facility's owner, who will be providing retail VOIP service, lacks the necessary facilities but wants the Petitioner to offer services to end users if the area is in the same broader

geographic advertising market as other areas where the facility's owner does have its own facilities. Petitioner states that the customers served through ILEC facilities would likely be direct non-VOIP retail customers of SET and that the Petitioner would be compensating the party which paid for the advertising that procured the customers.

- **Other Entry Methods**

Petitioner states that it does not intend to construct any telephone network facilities in New Jersey, however, it will seize any other business opportunities that may arise in the future which may include building its own facilities, reselling the services of another wholesale provider or developing some other entry method.

(B) **Non-Regulated Service:**

- **Planned Non-Regulated Service Offerings**

Petitioner states that it plans to offer regulated wholesale telecommunication services to facility owners who wish to provide unregulated retail VOIP service, as well as unregulated wholesale services to end users such as wholesale-level support for the facility owners' retail voice mail and caller-ID, internet access and back office processing functions. Petitioner also states that it does not expect to provide the retail unregulated VOIP service as this will be the task of the facility owners.

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 office in Coplay, Pennsylvania. 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, SET 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 SET, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

Proposed Use of Affiliate's Facilities for VOIP Service

SET's initial Petition sought the Board's approval to provide all forms of switched and dedicated, resale and facilities based, local exchange and interexchange telecommunications services throughout the State of New Jersey. In that Petition, SET indicated that it planned to use the facilities of its affiliate, SEC Hunterdon, in the provision of facilities based telecommunications services. The use of a cable television company's facilities by another entity, whether or not it is an affiliate of the cable company, for purposes not incidental to the provision of cable television service requires the execution of a lease agreement in accordance with N.J.S.A. 48:5A-40 and 41. However, SET would have been able to use SEC-Hunterdon's facilities without Board approval if SET's proposed usage of SEC-Hunterdon's facilities met the interim de minimis use exception established in the Lightpath and Comcast Board Orders. (See I/M/O the Petition of Cablevision of New Jersey, Inc., CSC TKR, Inc., Cablevision of Oakland, Inc., Cablevision of Paterson, Inc., Cablevision of Rockland/Ramapo, Inc., Cablevision of Warwick, Inc., Cablevision of Hudson County, Inc., Cablevision of Monmouth, Inc., and Cablevision of Newark for Regulatory Approvals, Docket No. CO98091001, November 23, 1998, and I/M/O a Request by Comcast Cablevision Corporation, Various Comcast New Jersey Cable Television Subsidiaries and Comcast Business Communications, Inc., to Allow Comcast Business Communications, Inc., to Utilize a Portion of Its New Jersey Affiliate's Cable Facilities in the Provision of Local and Interexchange Telecommunications Services in the State of New Jersey, BPU Docket No. CO01100699, January 23, 2002). The de minimis usage exception would permit SET to utilize up to 16 megahertz (MHz) of SEC-Hunterdon's total coaxial facility bandwidth and less than 5% of any fiber backbone facilities over any given fiber route to provide facilities based telecommunications services. SET was not able to demonstrate that its proposed use of SEC-Hunterdon's facilities would satisfy this exception.

SET chose not to enter into a leasing agreement with SEC-Hunterdon and submitted an amended petition on November 8, 2007 indicating a change in the company's business plans which no longer necessitated the use of SEC-Hunterdon's facilities to enter the New Jersey market. According to the amended petition, SET initially proposes to enter the New Jersey market through resale of incumbent local exchange carrier ("ILEC") facilities to provide retail telecommunications services to end users and through the provision of wholesale telecommunications switching and transport to third party providers such as SEC-Hunterdon enabling them to offer unregulated VOIP services to end users. Thereafter, on January 4, 2008, SEC-Hunterdon withdrew its petition in Docket No. CO07020111 that sought Board approval for SET to use a limited amount of capacity of SEC-Hunterdon Cable's facilities to provide VOIP service under N.J.S.A. 48:5A-40.

On January 4, 2008, SET and SEC-Hunterdon provided an Officer's Certificate to Board Staff in the within docket dated December 10, 2007 which certifies on behalf of both companies that SET will not use any of SEC-Hunterdon's facilities without first entering into a lease agreement and obtaining Board approval in accordance with N.J.S.A. 48:5A-40 and 41. As described in responses to information requests from Board Staff, SET indicated that it had entered into a leasing arrangement with Level 3 Communications, an unaffiliated third-party vendor, and would not need to lease facilities from SEC-Hunterdon. SET has agreed to provide Board Staff with a copy of this agreement.

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 and provides "[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, 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 SET'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 subject to conditions set forth herein.

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 and a copy of its lease agreement with Level 3 Communications is filed with the Board.

The Board HEREBY ORDERS that:

- 1) Petitioner shall file its tariff with the Board within ten (10) days of the date of this Order.
- 2) Petitioner shall file with the Board a copy of its lease agreement with Level 3 Communications governing the facilities to be used in providing VOIP service to Hunterdon within ten (10) days of the date of this Order.
- 3) Prior to the provision of and actual use by Petitioner of cable television facilities owned, operated or controlled by an affiliate of Petitioner or any other New Jersey cable television provider, Petitioner and the other cable company shall file with the Board an appropriate petition pursuant to N.J.S.A. 48:5A-40 and/or 41, in order to obtain the necessary Board approval.
- 4) 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.

- 5) 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:

6/16/08

BOARD OF PUBLIC UTILITIES
BY:

Jeanne M. Fox

JEANNE M. FOX
PRESIDENT

Frederick F. Butler

FREDERICK F. BUTLER
COMMISSIONER

Joseph L. Fiordaliso

JOSEPH L. FIORDALISO
COMMISSIONER

Christine V. Bator

CHRISTINE V. BATOR
COMMISSIONER

Nicholas Asselta

NICHOLAS ASSELTA
COMMISSIONER

ATTEST:

Kristi Izzo

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

Kristi Izzo

IN THE MATTER OF THE PETITION OF SERVICE ELECTRIC TELEPHONE COMPANY, LLC
FOR APPROVAL TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW JERSEY

DOCKET NO. TE05110972

SERVICE LIST

Petitioner's Contact Person:

Timothy A. Hausman
Director, Network Operations
Service Electric Telephone Company, LLC.
4242 Mauch Chunk Road
Coplay, Pennsylvania 18037-9608

Petitioner's Attorney:

Thomas C. Kelly, Esq
Attorney At Law
175 Fairfield Avenue, Unit 5A
P. O. Box 1558
West Caldwell, New Jersey 07006

Ratepayer Advocate:

Stefanie A. Brand, Esquire
Director, Division of Rate Counsel
Department of Public Advocate
31 Clinton Street, 11th Floor
Newark, New Jersey 07101

Deputy Attorney General:

Arlene E. Pasko
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
P. O. Box 45029
Newark, New Jersey 07102