



Agenda Date: 8/19/08
Agenda Item: IB

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 CBeyond)	ORDER
COMMUNICATIONS, LLC FOR AUTHORITY TO)	
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)	
TELECOMMUNICATIONS SERVICES)	
THROUGHOUT THE STATE OF NEW JERSEY)	DOCKET NO. TE08030144

(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 March 5, 2008, Cbeyond Communications, LLC ("Petitioner" or "Cbeyond") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting a Certificate of Public Convenience and Necessity to provide facilities-based and resold competitive local exchange and interexchange telecommunications services throughout the State of New Jersey.

Cbeyond is a limited liability company organized under the laws of the State of Delaware. Cbeyond was originally incorporated as Egility Communications, LLC on October 22, 1999. On April 25, 2000, Petitioner submitted a Certificate of Amendment changing its name to Cbeyond Communications, LLC. Cbeyond is a wholly owned subsidiary of Cbeyond Communications, Inc., a publicly-held Delaware Corporation. Petitioner's principal offices are located at 320 Interstate North Parkway, Suite 300, Atlanta, Georgia 30339.

Petitioner has submitted copies of its Certificate of Formation and Certificate of Amendment from the State of Delaware and its New Jersey Certificate of Good Standing and Certificate of Authority to operate as a Foreign Limited Liability Company. Petitioner is authorized to provide local exchange and interexchange telecommunications services in California, Colorado, District of Columbia, Florida, Georgia, Illinois, Massachusetts, Michigan, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Texas, Virginia and Washington and currently has applications pending in Maryland and Oregon. Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any criminal proceedings.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 intends to seek an interconnection agreement upon certification and will likely opt-into an agreement with Verizon New Jersey, Inc. and/or Comcast Cablevision Inc.

According to the Petition, Cbeyond seeks authority to provide all forms of facilities-based and resold competitive local exchange and interexchange telecommunications services. Petitioner anticipates collocating facilities in the central offices of other local exchange carriers and purchasing or leasing loops from incumbent local exchange carriers to deliver integrated voice, data and internet services to small and medium size business customers and other carriers in the State of New Jersey over its internet protocol network. Petitioner states that its services includes but is not limited to voice, data transmission, switched access, private branch exchange trunking, dual-party relay for the hearing and speech impaired customers, 911, basic local operator and directory assistance, equal access to intra and inter local access and transport area exchange carriers consistent with the rules and regulations of the Federal Communications Commission and standard white page directory listing. 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 located in Atlanta, Georgia. Petitioner 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 enable customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Cbeyond 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 Cbeyond have extensive managerial and technical experience in the telecommunications industry and are well qualified to execute its business plans.

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 Cbeyond'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 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.

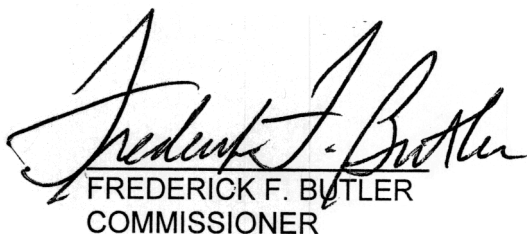
Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and within New Jersey. Therefore, subject 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

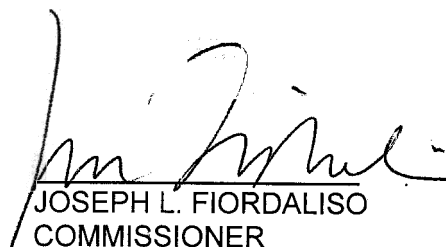
of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

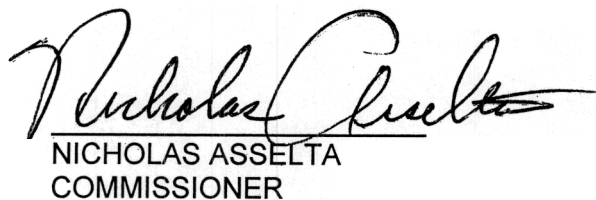
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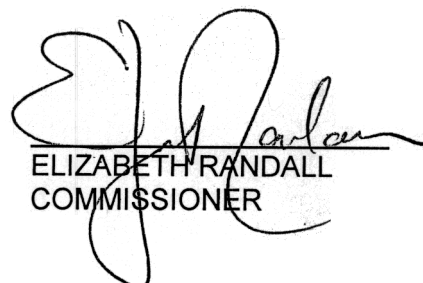
BOARD OF PUBLIC UTILITIES
BY:


JEANNE M. FOX
PRESIDENT


FREDERICK F. BUTLER
COMMISSIONER


JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER

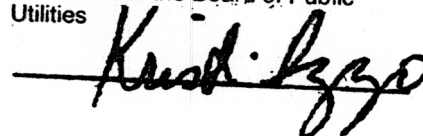

ELIZABETH RANDALL
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

JT:

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 CBeyond COMMUNICATIONS, LLC
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT
THE STATE OF NEW JERSEY

DOCKET NO. TE08030144

SERVICE LIST

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