



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center, Suite 801**  
**Newark, NJ 07102**  
**www.nj.gov/bpu/**

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF MOBILITIE, ) ORDER  
LLC D/B/A NYFI FOR APPROVAL TO PROVIDE )  
LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES )  
THROUGHOUT THE STATE OF NEW JERSEY ) DOCKET NO. TE10100771

Robert D. Balin, Esq., Davis Wright Tremaine LLP New York, New York, for Petitioner

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 15, 2010, Mobilitie, LLC d/b/a NYFI ("Petitioner" or "Mobilitie") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide both resold and facilities-based competitive local exchange, exchange access and non-dominant interexchange telecommunications services throughout the State of New Jersey.

Petitioner has submitted its financial information under seal and has filed a Motion for Confidentiality 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.

Mobilitie is a limited liability company organized under the laws of the State of Nevada. Petitioner's principal offices are located at 660 Newport Center Drive, Suite 200, Newport Beach, California 92660. Petitioner has submitted copies of its Certificate of Formation from the State of Nevada and its Certificate of Authority to conduct business in New Jersey as a foreign limited liability company. Petitioner is authorized to provide service in Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, New York, North Dakota, Oregon, Rhode Island, Texas, Vermont, Virginia, Washington and Wisconsin and its applications to provide service is pending in California, Georgia, North Carolina and Utah.

Petitioner does not at this time seek authority to provide local exchange telecommunications services in the service areas of small or rural local exchange carriers in New Jersey that qualify

for the rural exemption outlined in Section 251(f)(1) of the Federal Act. Petitioner to date has not commenced providing telecommunications services in New Jersey. Petitioner does not currently have an interconnection agreement with incumbent local exchange carrier because at present it does not intend to provide switched access voice services to either residential or business customers in New Jersey.

Mobilitee seeks authority to provide both resold and facilities-based competitive local exchange, exchange access and non-dominant interexchange telecommunications services throughout the state of New Jersey. Petitioner provides its services on an individual case basis and its service areas are uniquely tailored to its customers' needs and specifications. Petitioner's prospective customers are likely to include large wireless carriers. Petitioner will initially deploy its networks by using a combination of its own equipment and competitive local transport services purchased from other telecommunications companies and reselling them to wireless carriers. The Petitioner will also install and operate equipment to support backhaul services for wireless voice service providers. The Petitioner will provide its services using backhaul linked by fiber optic cables with conversion equipment attached to poles, wires, fiber termination equipment and other structures. Additionally, Mobilitee's services are designed in part to use wire-line telecommunications to fill gaps in data coverage without requiring the construction of large towers. The Petitioner does not initially intend to provide voice services to end-use-subscribers. However, should it decide to do so in the future, it will provide 911 & E911, telecommunications relay, directory assistance, operator and non-discriminatory interconnection services either directly or through an arrangement with other providers throughout the state of New Jersey. Petitioner does not currently have any facilities under construction in New Jersey. Pursuant to N.J.A.C.14:10-5.6(b), Petitioner has filed an initial tariff concurrently with its petition under Docket No TT10120952 which will become effective 30 days after the Board approves its petition for local exchange and interexchange authority. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner states that it has not been denied authority to provide telecommunications services in any jurisdiction, nor has its authority been revoked. Petitioner did, however, forfeit its authority to operate in New Hampshire, not for any non-compliance, but because it did not generate revenue from serving customers in New Hampshire within New Hampshire's statutory timeframe. Petitioner intends to reapply for certification in New Hampshire under normal procedures.

Petitioner states that it has been the subject of civil or criminal proceedings. In January 2010, Petitioner and its affiliates were named as defendants in a lawsuit arising from a contract dispute. The contract dispute concerned a property lease for a tower site in Michigan and is unrelated to the provision of the telecommunications services that Petitioner seeks to provide in New Jersey. The case was dismissed on June 17, 2010 by the Circuit Court for the County of Wayne, but the plaintiff has appealed the dismissal. Petitioner denies plaintiff's assertions and intends to vigorously defend against plaintiff's claims.

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. Petitioner, instead, 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 Newport Beach, California.

## 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 Mobilitie’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 the State of New Jersey.

Furthermore, the Board 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 HEREBY ORDERS

- 1) 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.
- 2) 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

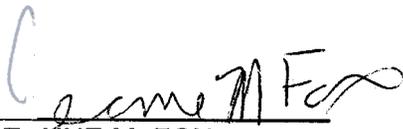
receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

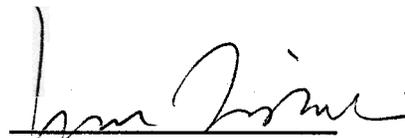
Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject 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 all 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: 4/27/11

BOARD OF PUBLIC UTILITIES  
BY:

  
LEE A. SOLOMON  
PRESIDENT

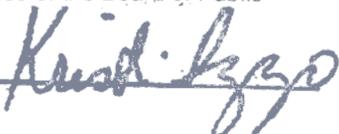
  
JEANNE M. FOX  
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COMMISSIONER

  
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 MOBILITIE, LLC D/B/A NYFI FOR  
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES  
IN THE STATE OF NEW JERSEY

DOCKET NO. TE10100771

SERVICE LIST

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