



Agenda Date: 12/17/14
Agenda Item: IA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF) ORDER
TALK AMERICA SERVICES, LLC FOR AUTHORITY TO)
PROVIDE FACILITIES-BASED LOCAL EXCHANGE)
AND INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES IN THE STATE OF NEW JERSEY) DOCKET NO. TE14111290

Parties of Record:

James H. Laskey, Esq., Norris, McLaughlin & Marcus, P.A., for Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

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 November 10, 2014, Talk America Services, LLC ("Petitioner" or "TAS") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based local exchange and interexchange telecommunications services to residential customers 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.

TAS is a privately held limited liability company organized under the laws of the State of Delaware and is a wholly-owned subsidiary of Communications Sales and Leasing, Inc. ("CSL"), a newly established corporation currently owned by Windstream Holdings, Inc. ("Windstream") but planned to be spun off as a separate publicly traded company in early 2015. Petitioner's principal offices are located at 4001 N. Rodney Parham Road, Little Rock, Arkansas, 72212.

This Petition is being filed in connection with a transaction involving Windstream and certain of its indirect subsidiaries,¹ who are planning to undertake a corporate Transaction ("Transaction") under which a few hundred New Jersey residential customers currently served by Windstream Companies will be mass migrated to Petitioner, who will then provide service to these customers as a wholly-owned subsidiary of CSL. Petitioner requests that the Board associate its Petition with the Verified Petition filed by Windstream Companies concerning the Transaction.² The transfer of customers to Petitioner will be undertaken only after TAS has obtained proper authority from the Board in order to provide facilities-based local exchange and interexchange services to residential customers currently subscribed to the Windstream Companies in New Jersey. At the consummation of the Transaction, CSL will be spun-off from Windstream as its own separate publicly-traded company and will be owned by the same shareholders that own Windstream.

Petitioner has submitted copies of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to operate as a Foreign Limited Liability Company. Petitioner is authorized to provide local exchange and interexchange service in the State of North Dakota and interexchange service in the State of Texas. With exception to the above States, Petitioner is not currently authorized to provide intrastate telecommunications services in any jurisdiction, but has applications pending with State Commissions for authority to provide intrastate telecommunications services in all of the contiguous United States and the District of Columbia. Petitioner is not seeking authority to provide services in Alaska and Hawaii.

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 entered into or requested interconnection/resale agreements in New Jersey, but where necessary for the provision of service has made arrangements with underlying carriers to assume the existing interconnection/resale agreements of Windstream Licensees.

Petitioner seeks authority to provide facilities-based local exchange and interexchange telecommunications services to Windstream Companies residential customers as a reseller to and from all points in the Verizon telephone exchange throughout the State of New Jersey that are currently open, and that become open, to competition, and to provide interexchange telecommunications statewide. Petitioner proposes to provide wireline local telecommunications service – specifically, local exchange service such as access to, emergency, operator, alternative operator, interexchange directory assistance, toll limitation to qualifying low-income consumer, and any other ancillary functionalities that the Petitioner must provide pursuant to applicable statutes and regulation; interexchange services; dedicated Internet Protocol-enabled; Integrated voice and data; and private line, frame relay and other non-voice services. Petitioner will operate the business as currently configured as opposed to constructing any new facilities in the State at this time. Petitioner's network will consist of leased facilities provided by other carriers. Petitioner will file initial tariff upon approval of its petition which will mirror the

¹ Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., Paetec Communications, Inc., Talk America, Inc., and US LEC of Pennsylvania, Inc. (collectively, the "Windstream Companies") authorized to provide telecommunications services in New Jersey.

² I/M/O Verified Petition of Cavalier Telephone Mid-Atlantic, LLC, Intellifiber Networks, Inc., Paetec Communications, Inc., Talk America, Inc., and US LEC of Pennsylvania, Inc. for the Mass Migration of Certain Intrastate Telecommunications Service Customers in the State of New Jersey, BPU Docket No. TO14091079 filed on September 30, 2014.

existing rates, terms and conditions of the Windstream Companies. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which require 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 Little Rock, Arkansas.

By letter dated November 25, 2014, the New Jersey Division of Rate Counsel submitted comments with the Board stating that, based on its review, "Rate Counsel is satisfied that the Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity." Id. at 1-2. In addition, Rate Counsel does not object to a grant of the waivers requested by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. Id. at 2. Accordingly, Rate Counsel "does not oppose the Board's grant of authority or approval of the requests contained in the Verified Petition." Id. at 3.

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 TAS' 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 in the State of New Jersey. Pursuant to N.J.A.C. 14:3-1.3(a), the Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board. Additionally, Petitioner is not relieved from its responsibility to file an Annual Report and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year.

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) 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 1 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.

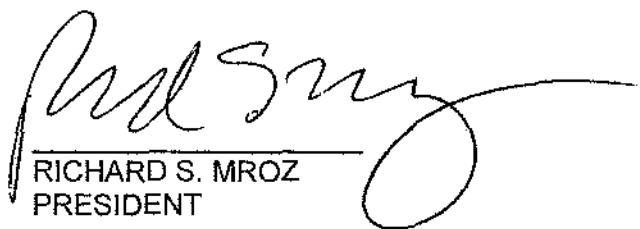
Regarding the Petitioner's request for waivers of the Board rules, the Board **FINDS** that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject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

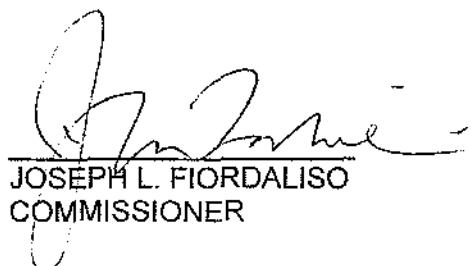
This Order shall be effective December 26, 2014.

DATED:

12/17/14

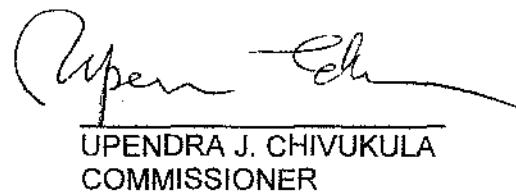
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ATTEST:


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 VERIFIED PETITION OF TALK AMERICA SERVICES, LLC FOR
AUTHORITY TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE14111290

SERVICE LIST

Jeffery W. Small, Sr. Vice-President
and Regulatory Contact
Talk America Services, LLC
4001 N. Rodney Parham Road
Little Rock, Arkansas 72212

James H. Laskey, Esq.
Norris, McLaughlin & Marcus, P.A.
721 Route 202-206
Suite 200
Bridgewater, New Jersey 08807

Stefanie A. Brand, Esq., Director
Maria T. Novas-Ruiz, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, New Jersey 08625-0003

Alex Moreau, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, New Jersey 07101-45029

Kristi Izzo
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Paul Flanagan, Esq.
Executive Director
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Alan Molner
Division of Telecommunications
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Valerie Haynes, Chief
Office of Case Management
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350