



Agenda Date: 7/29/16
Agenda Item: IB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF MEDIA)
THREE CORPORATION D.B.A. EMPIRE ONE)
TELECOMMUNICATIONS FOR AN ORDER OF)
APPROVAL TO PROVIDE COMPETITIVE FACILITIES-)
BASED LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE16050441

Parties of Record:

George Reither, Consultant, Telconsult, Inc. 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 April 30, 2016, Media Three Corporation d/b/a Empire One Telecommunications ("Petitioner" or "EOT") filed a verified petition with the New Jersey Board of Public Utilities ("Board") requesting an order of approval to provide competitive facilities-based intrastate local exchange and interexchange telecommunications services to subscribers throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a Motion for Confidentiality and 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.

EOT is a privately held corporation organized under the laws of the State of Delaware. Theodore Flomenhaft, CEO, Paul A. Butler, VP and Keng Wee Lim, VP having 51%, 21% and 21% ownership interest in the company, respectively. Petitioner will conduct business in New Jersey under the name EOT. Petitioner's principal offices are located at 254 36th Street, Suite C-304/Unit 12, Brooklyn, NY 11232.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Transact Business as a Foreign Corporation. Petitioner received a Certificate of Public Convenience and Necessity from the New York State Department of Public Service in 1998 to operate as a facilities-based Local Exchange Carrier

and, has been designated as an Eligible Telecommunications Carrier and currently provides Lifeline (wireline) services to disadvantaged communities in the State of New York. The Petitioner currently provides service through a combination of its own network and through partner networks to which the Petitioner interconnects. Petitioner states that it has not been denied authority to provide telecommunications services nor has its authority been revoked in any jurisdiction. Moreover, EOT states that it has not been the subject of any civil or criminal proceedings. Upon approval of its petition, Petitioner will negotiate with Verizon New Jersey, Inc. for access to unbundled network elements and the ability to provide access services in New Jersey. Petitioner has negotiated interconnection agreements with other competitive carriers certified in New Jersey in order to provide service.

Petitioner seeks authority to provide facilities-based competitive local exchange, switched exchange access, and inter Local Access Transport Area ("LATA") and Intra LATA interexchange telecommunications services¹ to subscribers within the State of New Jersey. Petitioner's request for facilities-based authority will be an expansion of the resold service that the Petitioner currently provides in New Jersey and will be incremental in nature. Initially, Petitioner will offer to wholesale carrier's switched access product which will allow the carriers to aggregate their inbound local traffic into one group. Petitioner initially plans to provide wholesale carrier services to Calling Card carriers serving users in New Jersey. Petitioner's services includes but is not limited to, retail switched and local exchange along with associated custom local area signaling services, custom calling, and intraLATA and InterLATA toll services. Petitioner will not supply directory or operator services. Petitioner will coordinate with incumbent local exchange carriers for the provision of emergency (E-911) services, directory publication, and directory distribution to local subscribers. Petitioner will serve its subscribers using a combination of local exchange carrier unbundled network elements and resold services. Petitioner's ability to provided facilities and network services will rely substantially on the technical capabilities and network services of the Petitioner's underlying carrier in New Jersey that has certified and deemed technically and manageably capable of providing telecommunications services in New Jersey. Petitioner will not construct facilities in New Jersey. Petitioner's services will be available twenty-four hours per day, seven days per week, at rates terms and conditions established by the Petitioner in its initial tariff which will be filed with the Board upon approval of its petition. 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 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 Brooklyn, New York.

By letter dated June 22, 2016, the New Jersey Division of Rate Counsel submitted comments to 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, and does not object to a grant of the waiver requested in connection with record-keeping by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. Accordingly, Rate Counsel does not oppose a grant of

¹ Petitioner is currently providing telecommunications services in the State of New Jersey as a reseller and have filed resale agreement with Verizon of New Jersey for the provision of non-facilities-based services.

authority or approval of Petitioner's request to provide facilities-based and resold local exchange telecommunications services to carrier customers throughout the State of New Jersey.

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(b).

In considering this petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets by 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 "[p]rovide 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 EOT's petition and the information supplied in support thereof, the Board **FINDS** that Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide local exchange and interexchange telecommunications services in the State of New Jersey. The Board noted that Pursuant to N.J.A.C. 14:3-1.3(a), 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, 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 within five (5) days of the issuance of a Board Order.
- 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.

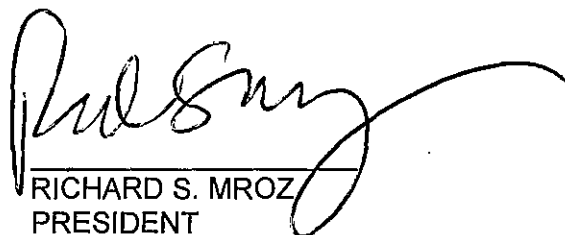
On or before February 1 of each year, Petitioner will receive from the Division of Audits an annual report package and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year. The purpose of these documents is to report Petitioner's financial information and gross 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 Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board **HEREBY FINDS** that the Petitioner demonstrated good cause why the Board should grant relief from its requirements that the Petitioner keep 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 **HEREBY APPROVES** the Petitioner's request for the exemptions from keeping its books and records in accordance with USOA and in New Jersey.

This Order shall be effective August 8, 2016.

DATED: 7/29/16

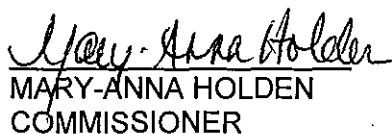
BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT



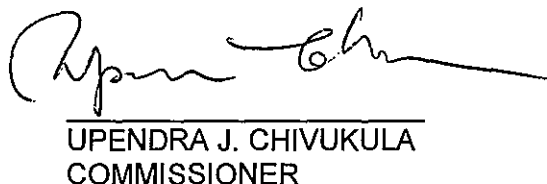
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COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

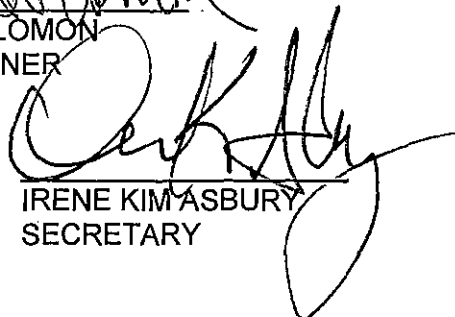


DIANNE SOLOMON
COMMISSIONER



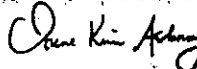
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



IRENE KIM ASBURY
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 MEDIA THREE CORPORATION D/B/A EMPIRE
ONE TELECOMMUNICATIONS FOR AN ORDER OF APPROVAL TO PROVIDE
COMPETITIVE FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE16050441

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