



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
**[www.nj.gov/bpu/](http://www.nj.gov/bpu/)**

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF )  
BLUEBIRD COMMUNICATIONS, LLC FOR APPROVAL ) ORDER  
TO PROVIDE RESOLD AND FACILITIES-BASED )  
INTEREXCHANGE AND LOCAL EXCHANGE )  
SERVICES THROUGHOUT NEW JERSEY ) DOCKET NO. TE16121188

**Parties of Record:**

**Murray E. Bevan, Esq.,** Bevan, Mosca & Giuditta, P. C. 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 Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated December 22, 2016, BlueBird Communications, LLC ("Petitioner" or "BlueBird") filed a verified petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold interexchange and local exchange telecommunications services to business and residential customers in 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.

**BACKGROUND**

BlueBird is a privately held limited liability company organized under the laws of the State of New York. Petitioner's principal offices are located at 387 Park Avenue South, 5<sup>th</sup> Floor, New York, New York 10016.

Petitioner has submitted copies of its Articles of Organization from the State of New York and its New Jersey Certificate of Authority to Transact Business as a Foreign Limited Liability Company. Petitioner is currently authorized to provide Facilities-Based Local Exchange Telecommunications Services in the State of New York. 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denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction, and it has not been the subject of any civil or criminal proceedings. Upon approval of its petition, Petitioner will negotiate an interconnection agreement with incumbent local exchange carriers.

Petitioner seeks authority to provide both facilities-based and resold local exchange and interexchange telecommunications services to business and residential customers in the State of New Jersey. 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 ("LECs") in New Jersey that qualify for rural exemption outlined in Section 251(f)(1) of the Federal Act. Petitioner plans to offer its aforementioned services using a combination of both its own facilities and facilities of other carriers by purchasing unbundled network elements. Petitioner's services will be provided using unbundled network element platform and resold telecommunications services. Petitioner's services include but are not limited to, local exchange services for business customers that will enable customer to originate and terminate local calls in the local calling area served by the Petitioner and other LECs, switched local exchange services such as flat-rate and measure-rated local services, vertical services, direct inward and outward dial trunks, carrier access, public and semi-public coin telephone services, and other switched local services that currently exist or will exist in the future. 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. For administrative efficiencies, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all financial 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 New York, New York.

By letter dated January 26, 2017, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments to the Board stating that, based on its review, Rate Counsel is satisfied that the verified petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity. Rate Counsel does not object to granting 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 place under seal. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide competitive local exchange and interexchange telecommunications services throughout the State of New Jersey.

## **DISCUSSION**

On February 8, 1996, the 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, promoting competition and removing barriers to entry in telecommunications markets 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). The Board, as the State regulatory authority, may impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers on a competitively neutral basis and consistent with universal service. 47 U.S.C. § 253(b).

In considering this petition for competitive local exchange carrier ("CLEC") authority to provide telecommunication services, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets by qualified applicants. 47 U.S.C. § 253(a). The Board additionally notes the State policy to "[p]rovide diversity in the supply of telecommunications services" and the Legislative 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" pursuant to the New Jersey Telecommunications Act of 1992. N.J.S.A. 48:2-21.16(a)(4), and N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed Bluebird's petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide facilities-based landline CLEC services only, is in compliance with the Board's filing requirements to provide landline facilities-based competitive local exchange telecommunications landline services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide competitive local exchange and interexchange telecommunications services in the State of New Jersey. These findings and authorization do not pertain to non-CLEC services. Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner must make the terms and conditions of said service publicly available on its website and must provide a printed copy of those terms and conditions to a customer upon request.

The granting of such authority conveys certain rights and privileges upon the Petitioner, in its designation as a CLEC in New Jersey, which are reserved for the provision of facilities-based landline services. While CLECs may also provide other telecommunications services, such as wireless, small cell or distributed antenna systems, these service offerings are beyond the scope of Board jurisdiction and the granting of CLEC authority in this Order and generally. Specifically, the Board granting of CLEC authority is limited to the provision of competitive facilities-based local and interexchange services. To the extent that a CLEC provides non-regulated telecommunications services, the CLEC benefits, rights or privileges are not applicable to those non-regulated services.

The Board **HEREBY ORDERS:**

- 1) Petitioner shall provide notice to the Board of its website link which contains the terms and conditions of its competitive local exchange telecommunications services within five (5) days from the effective date of a Board Order. To ensure service quality, Petitioner shall notify the Board within 10 days from the date it begins service to New Jersey customers;
- 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. If Petitioner does not receive the Board's annual report package from the Division of Audits on or before February 1 of each year, it is Petitioner's responsibility to obtain them from the Board. It is also Petitioner's responsibility to ensure timely filing of these reports;

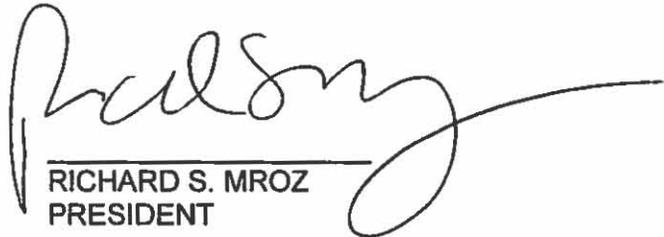
- 4) Failure to comply with this order may result in monetary penalties pursuant to N.J.S.A. 48:2-42, suspension of CLEC authority, and/or revocation of CLEC authority; and
- 5) In accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52, Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively.

Petitioner additionally requests a waiver of N.J.S.A. 48:3-7.8. Petition seeks authority to keep its books and records outside the State of New Jersey. The request was noticed and unopposed. Upon review, the Board **FINDS** that the Petitioner demonstrated good cause why relief should be granted. Subject to the Petitioner's continuing responsibility to produce such records at such time and place within this State as the Board may designate, in the manner requested, and to pay to all expenses or charges incurred for any investigation or examination of these books and records, the Board **GRANTS** its permission to keep records, books, accounts, documents and other writings outside the State of New Jersey pursuant to N.J.A.C. 14:1-15 and waives the USOA requirement at N.J.A.C. 14:1-4.3.

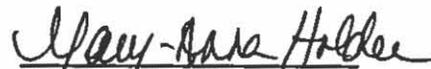
This Order shall be effective December 1, 2017.

DATED: 11/21/17

BOARD OF PUBLIC UTILITIES  
BY:

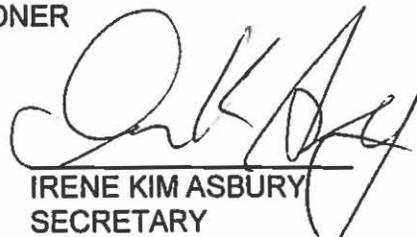
  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

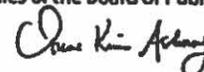
  
MARY-ANNA HOLDEN  
COMMISSIONER

  
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 VERIFIED PETITION OF BLUEBIRD COMMUNICATIONS, LLC  
FOR APPROVAL TO PROVIDE RESOLD AND FACILITIES-BASED INTEREXCHANGE AND  
LOCAL EXCHANGE SERVICES THROUGHOUT NEW JERSEY - DOCKET NO. TE16121188**

**SERVICE LIST**

**Petitioner**

Brian Shepard, President  
Bluebird Communications, LLC  
387 Park Avenue South, 5<sup>th</sup> Floor  
New York, NY10016  
[Brian@bluebirdphone.com](mailto:Brian@bluebirdphone.com)

**Attorney for Petitioner**

Murray E. Bevan, Esq.  
Bevan, Mosca & Giuditta, P. C.  
222 Mount Airy Road, Suite 200  
Basking Ridge, NJ 07920-2335  
[mbevan@bmq.law](mailto:mbevan@bmq.law)

**Division of Rate Counsel**

140 East Front Street, 4<sup>th</sup> Floor  
Post Office Box 003  
Trenton, NJ 08625-0003

Stefanie A. Brand, Esq., Director  
[sbrand@rpa.state.nj.us](mailto:sbrand@rpa.state.nj.us)

Maria T. Novas-Ruiz, Esq.  
[Mnovas-ruiz@rpa.state.nj.us](mailto:Mnovas-ruiz@rpa.state.nj.us)

**Department of Law & Public Safety**

Division of Law  
124 Halsey Street  
Post Office Box 45029  
Newark, NJ07101-45029

Caroline Vachier, Chief, DAG  
[Caroline.vachier@dol.lps.state.nj.us](mailto:Caroline.vachier@dol.lps.state.nj.us)

Veronica Beke, DAG  
[Veronica.beke@dol.lps.state.nj.us](mailto:Veronica.beke@dol.lps.state.nj.us)

**Board of Public Utilities**

44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Post Office Box 350  
Trenton, NJ 08625-0350

Irene Kim Asbury, Esq.  
Secretary of the Board  
[Irene.asbury@bpu.nj.gov](mailto:Irene.asbury@bpu.nj.gov)

Alice Bator, Director  
Division of Audits  
[Alice.bator@bpu.nj.gov](mailto:Alice.bator@bpu.nj.gov)

William Folly, Bureau Chief  
Division of Audits  
[William.folly@bpu.nj.gov](mailto:William.folly@bpu.nj.gov)

Lawanda Gilbert, Director  
Office of Cable Television and  
Telecommunications  
[Lawanda.gilbert@bpu.nj.gov](mailto:Lawanda.gilbert@bpu.nj.gov)

Harold Bond, Chief  
Office of Cable Television and  
Telecommunications  
[Harold.bond@bpu.nj.gov](mailto:Harold.bond@bpu.nj.gov)

Carol Artale, Esq.  
Legal Specialist  
Counsel's Office  
[Carol.artale@bpu.nj.gov](mailto:Carol.artale@bpu.nj.gov)

Valerie Haynes, Chief  
Office of Case Management  
[Valerie.haynes@bpu.nj.gov](mailto:Valerie.haynes@bpu.nj.gov)

Alan Molner, AA-4  
Office of Cable Television and  
Telecommunications  
[Alan.molner@bpu.nj.gov](mailto:Alan.molner@bpu.nj.gov)

Naren K. Ravaliya, AA 4 – Accounting  
Division of Audits  
[Naren.ravaliya@bpu.nj.gov](mailto:Naren.ravaliya@bpu.nj.gov)