



Agenda Date: 8/29/18
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 APPLICATION OF)
CLEAREON FIBER NETWORKS, LLC FOR)
COMPETITIVE LOCAL EXCHANGE CARRIER)
AUTHORITY TO PROVIDE FACILITIES-BASED LOCAL)
EXCHANGE AND INTEREXCHANGE SERVICES). DOCKET NO. TE18050573
THROUGHOUT THE STATE OF NEW JERSEY)

Parties of Record:

Judith A. Riley, Telecom Professionals, Inc. for Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

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 May 22, 2018, Cleareon Fiber Networks, LLC ("Petitioner" or "Cleareon") filed a petition with the New Jersey Board of Public Utilities ("Board") for Competitive Local Exchange Carrier ("CLEC") authority to provide facilities-based local exchange and interexchange services 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.

BACKGROUND

Cleareon is a privately held limited liability company organized under the laws of the State of Delaware on July 18, 2014 as Phoenix Fiber Networks, LLC ("Phoenix"). On April 27, 2016, Phoenix changed its name to Cleareon Fiber Networks, LLC. Petitioner's principal offices are located at 405 Lexington Avenue, 26th Floor, New York, New York 10174.

Petitioner has submitted copies of its Delaware Certificate of Amendment to the Certification of Formation and its New Jersey Certificate of Authority to Transact Business as a Foreign Limited Liability Company. Petitioner is currently authorized to provide local exchange and

¹ Commissioner Robert M. Gordon did not participate.

interexchange 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 Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal proceedings. Petitioner has not yet begun negotiating an interconnection agreement with Incumbent Local Exchange Carriers ("ILECs").

Petitioner is requesting CLEC authority to provide resold and facilities-based competitive local exchange and interexchange services entirely to resellers of telecommunications services on a wholesale and carrier-to-carrier basis within the State of New Jersey. Petitioner intends to begin initial service offerings in the major Metropolitan areas of New Jersey and then eventually expand to statewide capabilities. Petitioner will initially be a facilities-based wholesale provider of data and voice interexchange telecommunications services at above incremental costs. Petitioner plans to provide various exchange telecommunications services including dark fiber and Ethernet, dedicated point-to-point private line services, and dedicated internet access. Its services will initially be offered only to the resellers of telecommunications service on wholesale and carrier-to-carrier basis. At present Petitioner will not offer retail business and residential services to end user customers. Petitioner states that it may eventually provide facilities-based local exchange and retail telecommunications services to end user customers and will file the appropriate tariff and ensure that all end users have reliable and functional access to E-9-1-1 services. Petitioner plans to offer multiple interconnection options including private Ethernet and DS-3 over a meshed internet protocol backbone. Petitioner states that its intrastate call over fixed voice over internet protocol services could be identifiable. Petitioner states that it does not intend to provide operator services and has no immediate plans to build facilities within the State of New Jersey. Therefore, as a part of applicant's initial plan, Petitioner will lease high speed unbundled network elements from ILECs. Additionally, Petitioner intends to lease space for Ethernet switches at three (3) New Jersey Point of Presence ("POP") locations. The POP addresses are 165 Halsey Street in Newark; 1719 NJ Route 10 # 111 in Parsippany; and 3003 Woodbridge Avenue in Edison. Petitioner maintains a toll-free number for customer service inquiries and will file tariff upon approval of its petition.

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 ("GAAP") 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 May 29, 2018, 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 requests 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 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 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 Cleareon’s petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide resold and 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 resold and facilities-based 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 or file tariffs which contain the terms and conditions of its current competitive local exchange telecommunications services offering on wholesale and carrier-to-carrier basis 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;

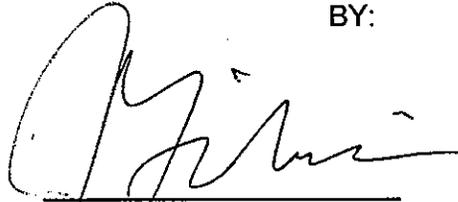
- 2) Petitioner shall provide notice to the Board of its website link or file tariffs which contain the terms and conditions of its competitive local exchange telecommunications services to end users before commencing/offering retail local exchange services to end-users. To ensure service quality, Petitioner shall notify the Board within 10 days from the date it begins providing such services to New Jersey customers;
- 3) Petitioner shall provide notice to the Board of its website link or file tariffs which contain the terms and conditions of offering E-9-1-1 services when Petitioner begins offering retail local exchange services to end-users to ensure that Petitioner's owned/leased facilities are equipped with providing reliable and functional access to E-9-1-1 services to end-users. To ensure service quality, Petitioner shall notify the Board within 10 days from the date it begins providing such services to New Jersey customers;
- 4) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3 and, N.J.S.A. 48:2-62, Petitioner shall file an annual report and a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before March 31 and June 1 of the following year, respectively. 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. 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;
- 5) 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
- 6) 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 and N.J.A.C. 14:1-4.3. Petitioner seeks authority to keep its books and records outside the State of New Jersey and in accordance with GAAP. 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 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.

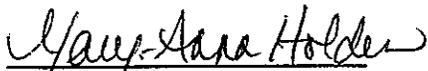
The effective date of this Order is September 8, 2018.

DATED: 8/29/18

BOARD OF PUBLIC UTILITIES
BY:



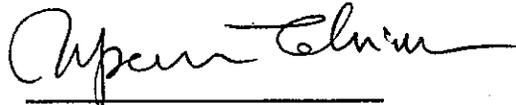
JOSEPH L. FIORDALISO
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MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
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UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE APPLICATION OF CLEARION FIBER NETWORKS, LLC
FOR COMPETITIVE LOCAL EXCHANGE CARRIER AUTHORITY TO PROVIDE
FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE SERVICES
THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE18050573

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