



Agenda Date: 4/18/19
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 EXTENET)
ASSET ENTITY, LLC FOR AUTHORIZATION TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES IN THE STATE)
OF NEW JERSEY)

ORDER

DOCKET NO. TE19020196

Parties of Record:

Dennis C. Linken, Esq., Partner, Scarinci & Hollenbeck, LLC
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 February 7, 2019, ExteNet Asset Entity, LLC ("Petitioner" or "EAE") filed a petition with the New Jersey Board of Public Utilities ("Board") for authority to provide local exchange and interexchange telecommunications 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

EAE is a privately held Limited Liability Company ("LLC") organized under the laws of the State of Delaware. EAE is direct, wholly owned subsidiary of ExteNet Issuer, LLC, which in turn is wholly owned by ExteNet Guarantor, LLC, which in turn is wholly owned by ExteNet Systems, Inc. ("ESI"), an indirect parent company of the Petitioner. ESI is a privately held Delaware corporation and a direct, wholly owned subsidiary of Odyssey Acquisition, LLC, a Delaware LLC which in turn is an indirect, wholly owned subsidiary of Mount Royal Holdings, LLC ("Parent"), a Delaware LLC. The Parent has no majority owner, but rather is owned by multiple private equity firms and certain individuals in management of ESI. Petitioner's principal offices are located at 3030 Warrenville Road, Suite 340, Lisle, Illinois 60532.

Petitioner has submitted copies of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to Conduct Business in New Jersey as a Foreign LLC. Petitioner is currently authorized to provide telecommunications services in the District of Columbia and New York. Petitioner has applied for authority to provide service in Illinois and Virginia and also plans to apply for authorization in Alabama, Arizona, Colorado, Connecticut, Delaware, Florida, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Texas, Utah, Washington, and Wisconsin. 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 does not have an executed interconnection agreement with any Incumbent Local Exchange Carrier ("ILEC") or other Competitive Local Exchange Carriers ("CLEC") because Petitioner does not intend to furnish and has no immediate plans to provide switched voice or dial tone services to residential and business customers other than Wireless Service Providers ("WSPs") and telecommunications carriers in the State of New Jersey. However, if in the future, Petitioner's telecommunications service offerings change and it decides to provide switched voice or dial tone local exchange and interexchange telecommunications services to residential and business customers, Petitioner will enter into an interconnection agreement with an ILEC whose facilities are equipped to provide reliable and functional access to E-9-1-1 services to end user customers pursuant to Federal Communications Commission guidelines as well as relevant state law and regulations.

Petitioner has filed this petition seeking authorization to provide telecommunications services in New Jersey for a newly formed entity pursuant to an intra-corporate assignment transaction, or Pro Forma Assignment ("PFA"), that will take over certain operations and assets from its indirect Parent, ESI, which currently holds authority to operate in New Jersey.¹ Upon approval of this petition, both EAE and ESI will separately file a Joint Petition for approval from the Board for the above-referenced PFA. Upon approval of this Petition and following the PFA, EAE will primarily provide services and networks, including dark fiber, targeted to Wireless Service Providers ("WSPs"). And, its indirect Parent, ESI, will continue to operate under its existing certificate and will focus on continuing to develop, sell, and construct new distributed networks and providing "lit" services to commercial users and new services.

Founded in 2002, ESI and its subsidiaries (collectively, "ExteNet") design, build, own and operate distributed networks for use by national and regional WSPs in key strategic markets in North America. ExteNet deploys distributed networks to enhance coverage and capacity and enable superior wireless services in both outdoor and indoor environments using fiber-fed Distributed Antenna Systems ("DAS"), small cells, Wi-Fi and other technologies. ESI's primary markets include outdoor distributed networks in a variety of densely occupied or heavily traveled settings, and venues used for sports and entertainment events, the hospitality industry, commercial buildings, and healthcare facilities. Petitioner, with its recent acquisition of Hudson

¹ In New Jersey, ESI, formerly known as ClearLinx Network Corporation, is authorized to provide local exchange and interexchange services. [I/M/O ClearLinx Network Corporation Petition for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey](#), Docket No. TE05121059 (April 13, 2006). Upon approval of this Petition, EAE and ESI will separately file a Joint Petition for approval from the Board for this PFA.

Fiber Network, Inc. ("HFN"), regulated by the Board, also provides private lines or IP-based transport services to other carrier and enterprise customers.²

Petitioner seeks authority to provide facilities-based and resold local exchange and interexchange non-voice telecommunications services in the State of New Jersey that are currently or may become open to competition. Petitioner will initially provide point-to-point telecommunications services to WSPs, other telecommunications carriers and communications providers. Petitioner will provide DAS services to WSPs on a wholesale basis. Petitioner will provide the same services as currently provided by its parent, ESI and will utilize the existing fiber network and other telecommunications infrastructure of ESI in New Jersey, which will be transferred to EAE in connection with the PFA. Pursuant to PFA, EAE will acquire and subsequently operate all of ESI's current on-air networks and related assets, including customer contracts. Petitioner does not intend to furnish switched voice or dial tone services and has no immediate plans to provide such services to residential or business customers other than WSPs and telecommunications carriers in New Jersey. Instead, Petitioner will offer its services on a non-discriminatory basis and at competitive rates but will do so through individual case basis contract. However, if in the future, should Petitioner's telecommunications service offerings change, Petitioner may provide switched voice or dial tone local exchange and interexchange telecommunications services to residential and business customers. Petitioner currently does not have any facilities nor does EAE plans to deploy facilities in New Jersey. Instead, following the PFA, Petitioner will initially operate on facilities currently owned by its parent, ESI, including fiber optic lines, poles, conduits, ducts and other access methods, where appropriate, to provide its services. At this time Petitioner does not seek to terminate small or rural exemptions existing under Section 251(f) of the Federal Telecommunications Act of 1996; however, EAE seeks statewide authority so that it may expand its service areas as those areas become open to the competition. Petitioner will continuously monitor and maintain a high level of control over its network on 24-hours-a-day, 7-days-a-week basis.

Petitioner maintains a toll-free number for customer service inquiries and will provide information regarding the general rates, terms and conditions of its services on its website at www.extenetsystems.com following 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 Lisle, Illinois.

By letter dated March 11, 2019, 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 placed under seal.

² In New Jersey, HFN is authorized to provide local exchange and interexchange telecommunications services. I/M/O Hudson Fiber Network, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey. Docket No. TE10050365. (August 18, 2010).

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 EAE's petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide local exchange and interexchange telecommunications services, 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 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.

Regarding EAE's request that its information be treated confidentially, the Board makes no finding and directs that the information be considered in accordance with the Board's rules at N.J.A.C. 14:1-12 et seq.

The Board **HEREBY ORDERS:**

- 1) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner must post the terms and conditions of its retail competitive services on its website in a publically-available location, and must also provide a printed copy of those terms and conditions to a customer upon request of the customer;
- 2) Petitioner shall provide notice to the Board of its website link described above that contains the terms and conditions of its competitive local exchange and interexchange telecommunications services to end-use subscribers before commencing/offering retail local exchange services to end-use subscribers. 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 which contains the terms and conditions of 9-1-1 and E-9-1-1 service when Petitioner begins offering retail local exchange services to end-use subscribers to ensure that Petitioner's owned/leased facilities are equipped to provide reliable and functional access to 9-1-1 and E-9-1-1 services to end-use subscribers. 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**

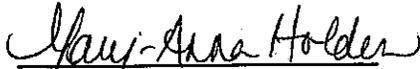
its permission to keep records, books, accounts, documents and other writings outside the State of New Jersey pursuant to N.J.A.C. 14:1-15 and waives the USOA requirement at N.J.A.C. 14:1-4.3.

This Order shall be effective April 28, 2019.

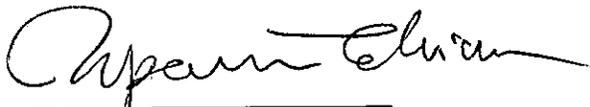
DATED: 4/18/19

BOARD OF PUBLIC UTILITIES
BY:

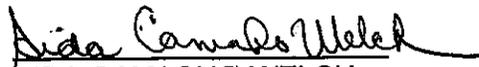

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COMMISSIONER

ATTEST: 
AIDA CAMACHO-WELCH
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 PETITION OF EXTENET ASSET ENTITY, LLC FOR AUTHORIZATION
TO PROVIDE COMPETITIVE AND LOCAL AND INTEREXCHANGE ELECOMMUNICATIONS
SERVICES IN THE STATE OF NEW JERSEY**

DOCKET NO. TE19020196

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