



Agenda Date: 6/21/19
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 SHERPA)
FIBER, LLC FOR APPROVAL TO PROVIDE)
FACILITIES BASED AND RESOLD LOCAL EXCHANGE)
AND INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES THROUGHOUT THE STATE OF NEW)
JERSEY)

ORDER

DOCKET NO. TE19030394

Parties of Record:

Michael A. Gruin, Esq., Stevens & Lee, P. C., on behalf of 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 March 25, 2019, Sherpa Fiber, LLC (“Petitioner” or “Sherpa”) filed a petition with the New Jersey Board of Public Utilities (“Board”) for authority to provide facilities-based private line dedicated point-to-point and point-to-multipoint 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

Sherpa is a privately held Limited Liability Company (“LLC”) organized under the laws of the State of Kansas. Sherpa has no parent company, and has no affiliates that provide telecommunications services. According to the Certificate of Merger, Sherpa was merged with and into Third20 Group LLC, a limited liability company organized under the laws of Kansas on June 1, 2018. However, the Article of Organization of Surviving Company was amended declaring Sherpa as a surviving company instead of Third20 Group, LLC. Petitioner’s principal offices are located at 13430 West 98th Street, Lenexa, Kansas 66215.

Petitioner has submitted copies of its Article of Organization from the State of Kansas along with its Certificate of Merger and its New Jersey Certificate of Registration to Conduct Business in New Jersey as a Foreign LLC. Petitioner is currently not licensed or certificated as a telecommunications carrier in any jurisdiction; however, Sherpa currently has an application pending before the Pennsylvania Public Utility Commission for a Certificate of Public Convenience to offer telecommunications services as a Competitive Access Provider in the Commonwealth of Pennsylvania. Petitioner states that it has not been subject to any complaints or civil or criminal proceedings in any jurisdictions.

Petitioner states that initially it does not expect the need for immediate interconnection to the network of the Incumbent Local Exchange Carrier ("ILEC") because Sherpa does not expect to provide switched voice or dial tone local exchange or interexchange services to any residential customers. However, Petitioner may at some point provide switched voice and/or dial tone local exchange or interexchange services to government, school, and library customers. If and when Sherpa does make such offerings, it will enter into an interconnection agreement with ILECs whose leased facilities are equipped to provide E-9-1-1 services to end user customers pursuant to Federal Communications Commission ("FCC") guidelines. And, Petitioner will seek the necessary Board approval for its Interconnection Agreement.

Petitioner seeks authority to provide facilities-based private line dedicated point-to-point and point-to-multipoint voice and data services to businesses, government, school districts, schools and libraries. Initially, Petitioner will offer managed leased lit fiber, leased dark fiber, and indefeasible right of use of dark fiber wide area networks to K-12 school districts. Petitioner will deliver its telecommunications services over its own fiber optic cable network and may, where necessary, utilize the facilities of other providers. Petitioner's primary method of customer acquisition will be making proposals and responding to requests for proposals from schools and school districts in New Jersey to provide dedicated point-to-point and wide area networks. Petitioner expects many of its projects to receive funding from the FCC's Schools and Libraries E-rate Program administered by the Universal Service Administrative Company. Petitioner will construct facilities as needed to service its customers, in accordance with the customers' specific requirements. Petitioner expects to construct such facilities throughout New Jersey. Petitioner will file tariffs with the Board prior to initiating tariffed services to any customer in New Jersey. Petitioner maintains a toll-free number for customer service inquiries on a 24-hours-a-day, 7-days-a-week basis.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8, which requires that books and records be kept within the State of New Jersey. For administrative efficiencies, Petitioner requests permission to maintain 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 Lenexa, Kansas.

By letter dated April 30, 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. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide facilities-based 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 Sherpa’s petition and the information supplied, the Board **FINDS** that Petitioner, with respect to its request to provide facilities-based 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 Sherpa’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. Petitioner 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 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.

This Order shall be effective July 1, 2019.

DATED: 6/21/19

BOARD OF PUBLIC UTILITIES
BY:

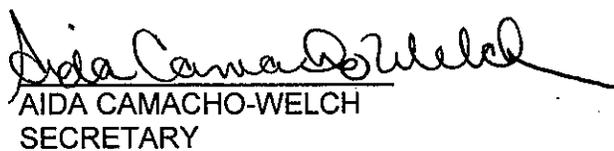

JOSEPH L. FIORDALISO
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER


DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER


ROBERT M. GORDON
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 SHERPA FIBER, LLC FOR APPROVAL TO PROVIDE
FACILITIES BASED AND RESOLD LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE19030394

SERVICE LIST

Emily Lomaka
Accounting & Compliance Manager
Sherpa Fiber, LLC
13430 West 98th Street
Lenexa, Kansas 66215
Compliance@Sherpafiber.com

Michael A. Gruin, Esq.
Stevens & Lee, P. C.
Lawyers & Consultants
17 North 2nd Street, 16th Floor
Harrisburg, Pennsylvania 17101
mag@stevenslee.com

Division of Rate Counsel
Post Office Box 003
Trenton, New Jersey 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.state.nj.us

Maria T. Novas-Ruiz, Esq.
Mnovas-ruiz@rpa.state.nj.us

Department of Law & Public Safety
Division of Law
Post Office Box 45029
Newark, New Jersey 07101-45029

Caroline Vachier, Chief, DAG
Caroline.vachier@law.njoag.gov

Patricia Krogman, DAG
Patricia.krogman@law.njoag.gov

Renee Greenberg, DAG
Renee.greenberg@law.njoag.gov

Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350

Aida Camacho-Welch
Secretary of the Board
Board.secretary@bpu.nj.gov

Division of Audits
Alice Bator, Director,
Alice.bator@bpu.nj.gov

William Foley, Bureau Chief
William.foley@bpu.nj.gov

Naren K. Ravaliya, AA 4 – Accounting
Naren.ravaliya@bpu.nj.gov

**Office of Cable Television and
Telecommunications**
Lawanda Gilbert, Director
Lawanda.gilbert@bpu.nj.gov

Harold Bond, Chief Engineering and Rates
Harold.bond@bpu.nj.gov

Alan Molner, AA-4
Alan.molner@bpu.nj.gov

Counsel's Office
Carol Artale, Esq.
Deputy General Counsel
Carol.artale@bpu.nj.gov

Lanhi Saldana, Esq.
Lanhi.saldana@bpu.nj.gov

Office of Case Management
Karriemah Graham, Chief
Karriemah.graham@bpu.nj.gov