



Agenda Date: 9/11/19
Agenda Item: IB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF)
FOURSQUARE COMMUNICATIONS, LLC FOR)
AUTHORITY TO PROVIDE COMPETITIVE FACILITIES-)
BASED LOCAL EXCHANGE SERVICES,)
INTEREXCHANGE SERVICES, AND EXCHANGE)
ACCESS SERVICES THROUGHOUT THE STATE OF)
NEW JERSEY)

ORDER

DOCKET NO. TE19070786

Parties of Record:

James H. Laskey, Esq., Norris McLaughlin P. A.
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 July 1, 2019, Foursquare Communications, LLC ("Petitioner" or "Foursquare") filed a verified petition with the New Jersey Board of Public Utilities ("Board") for authority to provide all forms of facilities-based competitive local exchange, interexchange and exchange access 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

Foursquare is a privately held Limited Liability Company organized under the laws of the State of Delaware on June 27, 2018. Petitioner's principal offices are located at 17 East Monroe, Suite 208, Chicago, Illinois 60603.

Petitioner has submitted copies of its Certificate of Formation, Registration and Good Standing from the State of Delaware and its New Jersey Certificate of Registration to Conduct Business in New Jersey as a Foreign Limited Liability Company. Petitioner is currently authorized to provide local exchange and interexchange telecommunications services in Illinois.

Petitioner states that it has not been denied authority to provide telecommunications services and its authority has not been revoked in any jurisdiction. Petitioner further states that there are not now, nor have there been, civil or criminal proceedings against the Foursquare in any jurisdiction, including settlements of any proceedings. And, Petitioner has never filed for bankruptcy nor has it been the subject of any state or federal investigation.

Petitioner has not yet executed an interconnection agreement with an incumbent local exchange carrier. However, upon approval of its Petition, Petitioner will negotiate and enter into an interconnection agreement with Verizon New Jersey, Inc. ("VNJ").

Petitioner initially seeks statewide authority to provide all forms of facilities-based competitive local exchange, interexchange, exchange access and private line telecommunications services in exchanges served by VNJ to business customers throughout the State of New Jersey. And, it may expand its service areas as market conditions warrant and as additional service areas become open to competition. Petitioner intends to provide its competitive telecommunications services through the purchase of unbundled network elements from other facilities-based carriers as well as over leased and owned fiber facilities. Petitioner intends to construct fiber to underserved areas and to cellular towers to its business customers as they need additional capacity in some cases and in other cases there is no connectivity from the tower back into a carrier's point of presence. And, Petitioner's business customers could then use this infrastructure for whatever business purpose suits their needs. This will enable business to business customers to use company provided fiber to offer internet, internet provided telephone, cable TV services and use this fiber to connect to data center facilities in New Jersey. The Petitioner has no plans at this time to offer local exchange or long distance calling services. However in the future, the Petitioner intends to offer local and interexchange private line exchange service throughout the state of New Jersey. In the event Petitioner offers switched voice or dial tone local exchange service to residential customers in the future, VNJ's leased facilities are equipped to provide E-9-1-1 services to end user customers in accordance with Federal Communications Commission's guidelines. In such event, Petitioner will post appropriate rules and regulations relating to such services on its website. Petitioner's services are custom designed and priced based on the individual business application and will provide its services and negotiate rates with customers on an individual case basis.

Petitioner maintains a toll-free number for customer service inquiries which is available 24 hours a day, 7 days a week, and plans to post its general terms and conditions on its website at www.foursquare.com following the 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 Chicago, Illinois.

By letter dated August 09, 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 competitive facilities-based local exchange, interexchange and exchange access 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 Foursquare's petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide competitive facilities-based local exchange, interexchange and exchange access 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 competitive facilities-based local exchange, interexchange and exchange access 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 Foursquare'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:**

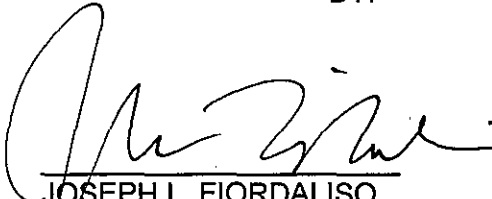
- 1) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner must post the terms and conditions of its retail competitive services on its website in a publically-available location, and must also provide a printed copy of those terms and conditions to a customer upon request of the customer;
- 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 September 21, 2019.

DATED: 9/11/19


BOARD OF PUBLIC UTILITIES
BY:



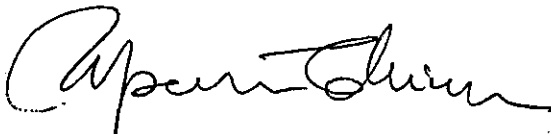
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DIANNE SOLOMON
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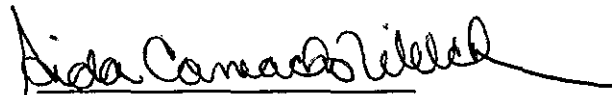


UPENDRA J. CHIVUKULA
COMMISSIONER



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 VERIFIED PETITION OF FOURSQUARE COMMUNICATIONS, LLC
FOR AUTHORITY TO PROVIDE COMPETITIVE FACILITIES-BASED LOCAL
EXCHANGE SERVICES, INTEREXCHANGE SERVICES, AND EXCHANGE
ACCESS SERVICES THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE19070786

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