



Agenda Date: 8/16/23
Agenda Item: IB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF)
AVATARIUS, LLC FOR AUTHORIZATION TO PROVIDE)
LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY) ORDER

DOCKET NO. TE23030127

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Joseph Issacs, Chief Regulatory Officer, for Petitioner

BY THE BOARD:

On March 2, 2023, AvaTarius, LLC (“Petitioner” or “AvaTarius”) filed a petition with the New Jersey Board of Public Utilities (“Board”), pursuant to the New Jersey Telecommunications Act of 1992 (“1992 Act”), N.J.S.A. 48:2-21.16 *et seq.*, and the Federal Telecommunications Act of 1996 (“Federal Act”), Pub. L. No. 104-104, 110 Stat. 56 (1996), requesting authorization from the Board to provide facilities-based and resold competitive local exchange access and non-dominant interexchange telecommunications services throughout the State of New Jersey (“Petition”). At this time, Petitioner does not seek authority to provide local exchange telecommunications services in the service areas of small or rural local exchange carriers in New Jersey that qualify for the rural exemption outlined in Section 251(f)(1) of the Federal Act.

BACKGROUND

AvaTarius is a privately held limited liability company organized under the laws of the State of New Jersey.¹ Petitioner’s principal offices are located at 972 Broad Street, Newark, New Jersey.

Petitioner is not currently authorized to provide telecommunications service in any other jurisdiction, but has a pending application for authorization to provide telecommunications services in the State of New York. Petitioner asserted that it has not had a certification or authorization denied, suspended, terminated, or revoked by any state. According to Petitioner,

¹ Petitioner has submitted copies of its Certificate of Incorporation from the State of New Jersey and its New Jersey Certificate of Authority to Transact Business as a Domestic For-Profit Corporation.

neither Petitioner nor any of its officers has been or is currently the subject of any civil or criminal proceedings pending before any state or federal regulatory commission, administrative agency, or law enforcement agency that could adversely affect its ability to provide telecommunications services in New Jersey. Petitioner has not yet executed an interconnection agreement for New Jersey operations but indicated that it has begun negotiations with Verizon New Jersey and intends to complete those negotiations in the very near future and upon approval of the Petition.

Petitioner seeks authority to provide competitive facilities-based and resold local exchange access and non-dominant interexchange services to business customers and all other carriers throughout the State of New Jersey. Petitioner seeks to provide competitive local transport services ("Services"). Petitioner indicated that its initial plan is to deploy its networks by using a combination of its own equipment in addition to services purchased from other telecommunications companies and reselling them to wireless carriers. Petitioner maintained that it intends to install and operate equipment to support backhaul services for wireline and Voice over Internet Protocol ("VoIP") voice service providers. Petitioner seeks to provide its Services using backhaul linked by fiber optic cables with conversion equipment attached to poles, wires, fiber termination equipment, and other structures.

Petitioner indicated that its Services are designed, in part, to use wire line telecommunications to fill in gaps in data coverage without requiring the construction of major facilities. Petitioner asserted that, although it does not initially intend to provide voice service to end-use-subscribers, should it do so in the future, Petitioner will provide, either directly or through arrangements with others, access to 911 and E911, telecommunications relay, directory assistance and operator services and non-discriminatory interconnection with other local exchange carriers. Petitioner maintained that its plan for the next year and five (5) years consists of providing services to large business customers and other carriers for data circuits. The Petitioner attached as an exhibit to the Petition a copy of its access tariff 1, which is also posted on its website. 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.avatarius.net upon securing Board approval of its request in the Petition.

Pursuant to N.J.A.C. 14:1-1.2, Petitioner also requested a waiver of N.J.A.C. 14:1-4.3 which requires Petitioner to maintain its books and records in accordance with the Uniform System of Accounts ("USOA"). For administrative efficiencies, Petitioner requested permission to maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"). Petitioner indicated that it will comply with N.J.A.C. 14:1-4.3 if the Board does not grant the waiver.

By letter dated May 5, 2023, 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 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 maintenance of books and records per the GAAP as opposed to the USOA. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide local and interexchange telecommunications services throughout the State of New Jersey.

DISCUSSION AND FINDINGS

On February 8, 1996, the Federal Act was signed into law to promote competition and remove barriers to entry into telecommunications markets. To that end, 47 U.S.C. § 253(a) provides 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.” However, pursuant to 47 U.S.C. § 253(b), the Board, as the State’s 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 that is consistent with universal service.

In considering the instant Petition for CLEC authority to provide telecommunication services, the Board recognizes its obligation to not prohibit entry into intrastate telecommunications markets by qualified applicants. 47 U.S.C. § 253(a). The Board additionally notes, pursuant to the 1992 Act, that State policy is 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.” N.J.S.A. 48:2-21.16(a)(4), (b)(1) and (b)(3).

Therefore, having reviewed AvaTarius’ s Petition and the information supplied, the Board **HEREBY FINDS** that, with respect to its request for approval to provide local exchange and interexchange services, Petitioner 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 services throughout 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 shall make the terms and conditions of said service publicly available on its website and shall 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) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner shall post the terms and conditions of its retail competitive services on its website in a publicly available location, and shall also provide a printed copy of those terms and conditions to a customer upon the customer’s request.
- 2) Petitioner shall provide the Board and Rate Counsel with a link to the page of the website described above that contains the terms and conditions of its competitive local exchange and interexchange telecommunications services no later than five (5) days after the effective date of this Order. 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 the Board with a link to the page of its website that contains the terms and conditions of 9-1-1 and E-9-1-1 services 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 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;

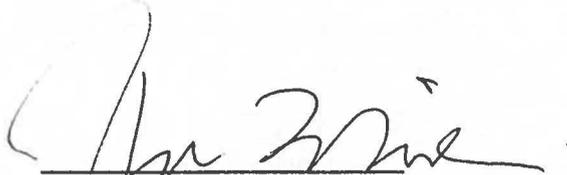
- 4) Pursuant to N.J.S.A. 48:2-16(2)(b), N.J.A.C. 14:3-6.3, and N.J.S.A. 48:2-62, Petitioner shall file an annual report and a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before March 31 and June 1 of the following year, respectively. 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, N.J.S.A. 48:2-60 and N.J.S.A. 52:27EE-52, Petitioner is subject to an annual assessment by both the Board and Rate Counsel, respectively.

The Petitioner additionally requested a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3. Upon review, the Board **FINDS** that the Petitioner demonstrated requisite good cause for the Board to grant such relief pursuant to N.J.A.C. 14:1-1.2. Accordingly, the Board **HEREBY GRANTS** AvaTarius permission to adhere to the GAAP and waives the USOA requirements at N.J.A.C. 14:1-4.3.

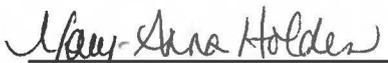
This Order shall be effective August 23, 2023.

DATED: August 16, 2023

BOARD OF PUBLIC UTILITIES
BY:



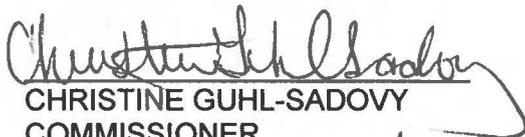
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PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



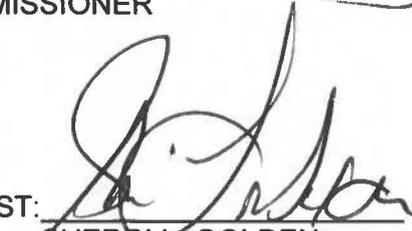
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ATTEST: 
SHERRIL L. GOLDEN
SECRETARY

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 APPLICATION OF AVATARIUS, LLC FOR AUTHORIZATION TO PROVIDE
LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES THROUGHOUT
THE STATE OF NEW JERSEY

DOCKET NO. TE23030127

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