



Agenda Date: 9/30/14
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 ZENFI NETWORKS, INC.'S)
VERIFIED PETITION TO PROVIDE RESOLD AND)
FACILITIES-BASED LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES THROUGHOUT NEW JERSEY)
ORDER
DOCKET NO. TE14080907

Parties of Record:

William K. Mosca Jr., Esq., Bevan, Mosca, Giuditta & Zarillo, P.C., for 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 Federal Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated August 12, 2014, ZenFi Networks, Inc. ("Petitioner" or "ZenFi") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide "facilities-based and resold local and interexchange telecommunications services in the State of New Jersey."¹ Petition at 7. 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.

ZenFi is a privately held company organized under the laws of the State of Delaware. Principals of the Petitioner, through their affiliated business, Hugh O'Kne Electric Company and Metro Network Services currently provide Design, Build and Maintenance services to nearly every facilities based telecommunications provider in the region. ZenFi's principal offices are located at 90 White Street, New York, New York 10013.

Petitioner has submitted copies of its Certificate of Incorporation and a Certificate of Good Standing from the State of Delaware and its New Jersey Certificate of Authority to Operate as a

¹ By letter dated September 4, 2014, ZenFi clarified that it seeks Board approval to provide Resold and Facilities Local Exchange and Interexchange Telecommunications services throughout New Jersey and requested that the caption be amended accordingly.

Foreign Corporation. Petitioner is authorized to provide resold and facilities-based telecommunications and information 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 states that it will enter into an interconnection agreement with Verizon, New Jersey and Electric Utilities for access to space on telephone poles and in underground conduits, and for use of other right-of-way in order to construct a state of the art fiber network upon approval of petition for authority.

Petitioner seeks authority to provide both resold and facilities-based local exchange and interexchange telecommunications services to business/enterprise customers in the State of New Jersey. Petitioner intends to provide the said services using owned and leased facilities from Verizon-New Jersey. Petitioner is a mobile wireless infrastructure provider offering dark fiber, fractional dark fiber and interconnection services to business/enterprise customers. Its rates are negotiated on individual case basis. Petitioner plans to build and operate a high density fiber optic network primarily providing dark fiber, Ethernet, Common Public Radio Interface and Colocation to mobile wireless Operators, enabling expansion of coverage and capacity of carrier based mobile wireless networks including 3G, 4G and Long Term Evolution technologies. Petitioner is currently constructing a 15 miles ultra-low latency metro fiber ring connecting strategic datacenters and collocation facilities in New Jersey. Initial offering will be made to enterprise and carrier customers located in Newark and Weehawken and in municipalities along the fiber ring being constructed to connect locations in Weehawken, North Bergen, Secaucus and Newark. Petitioner maintains a toll-free number for customer service inquiries. Petitioner will file an initial 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. Petitioner, instead, requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all 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 August 20, 2014, the New Jersey Division of Rate Counsel submitted comments with 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." Id. at 1. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide telecommunications services in New Jersey. Id. at 1-2. In addition, Rate Counsel does not object to a grant of the waivers requested by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. Id. at 2.

DISCUSSION

On February 8, 1996, the Federal 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, removing barriers to competition 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).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. § 253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. § 253(a). The Board also considers the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services and the Legislature's 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); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed ZenFi's Petition and the information supplied in support thereof, the Board **FINDS** that the Petitioner is in compliance with the Board's filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** the Petitioner to provide local exchange and interexchange telecommunications services in the State of New Jersey. Pursuant to N.J.A.C. 14:3-1.3(a), the Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board. Additionally, Petitioner is not relieved from its responsibility to file an Annual Report and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year.

Furthermore, the Board **FINDS** that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52, the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively.

The Board **HEREBY ORDERS**:

- 1) Petitioner shall file its tariff with the Board.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. 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.
- 3) Pursuant to N.J.S.A. 48:2-62, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1 of each year, the Petitioner will receive from the Division of Audits an annual report package and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board **FINDS** that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements

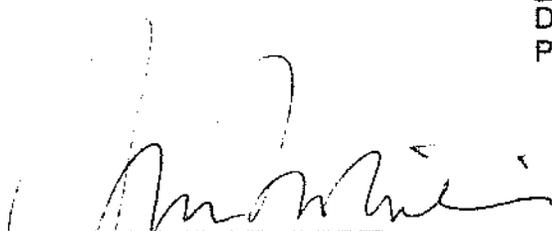
that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours' notice, and in the manner requested, and to pay to the Board all expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board **APPROVES** the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

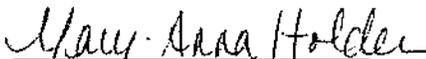
This Order shall be effective October 10, 2014.

DATED: 9/30/14

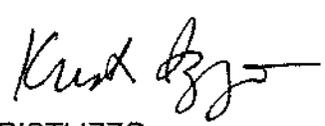
BOARD OF PUBLIC UTILITIES
BY:


DIANNE SOLOMON
PRESIDENT

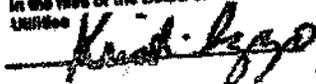

JOSEPH L. FIORDALISO
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within
documents are a true copy of the original
in the files of the Board of Public
Utilities



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RESOLD AND FACILITIES-BASED LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT NEW JERSEY
DOCKET NO. TE14080907

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