



Agenda Date: 5/22/18
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 BIRCH COMMUNICATIONS OF)
THE NORTHEAST, LLC PETITION FOR AUTHORITY) ORDER
TO PROVIDE LOCAL EXCHANGE AND INTRASTATE)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES WITHIN THE STATE OF NEW JERSEY) DOCKET NO. TE17121242

Parties of Record:

Angela F. Collins, Esq., Cahill Gordon & Reindel, LLP
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 November 27, 2017, Birch Communications of the Northeast, Inc., now known as Birch Communications of the Northeast, LLC ("Petitioner" or "Birch") filed a verified petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold local exchange and intrastate interexchange telecommunications services within New Jersey.¹ 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

Petitioner is a privately held corporation organized under the laws of the State of Delaware. Petitioner's principal offices are located at 320 Interstate North Parkway SE, Atlanta, GA 30339. Birch Communications, Inc. ("BCI"), the parent company of Petitioner, has been authorized to

¹ Subsequent to its filing, Birch converted its legal entity status from a corporation to a limited liability company effective December 30, 2017. The Company filed a Certificate of Conversion from Incorporation to Limited Liability Company from the State of Delaware, a Certificate of Formation of Birch Communications of the Northeast, LLC from the State of Delaware, and its New Jersey Certificate of Authority to Operate as a foreign Limited Liability Company.

provide local exchange and interexchange telecommunications services in New Jersey since July 1, 2009.²

Petitioner has submitted copies of its Certificate of Conversion from a Corporation to a Limited Liability Company and its Certificate of Good Standing from the State of Delaware and its New Jersey Certificate of Authority to Transact Business as a Foreign Limited Liability Company. According to the petition, Petitioner currently is authorized to provide telecommunications services in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, Vermont, and West Virginia. Petitioner holds authority from the Federal Communications Commission ("FCC") to provide interstate and international telecommunications services. Petitioner's affiliates are authorized to provide local exchange and/or interexchange services in all 50 states and the District of Columbia. Petitioner has an interconnection agreement with Verizon New Jersey, Inc. ("VNJ") applicable to other states. Petitioner's parent company has an interconnection agreement with VNJ. Petitioner expects to utilize those agreements, along with its existing commercial agreements with VNJ.

Petitioner states that it has not been denied authority to provide telecommunications services nor has its authority been revoked in any jurisdiction. Moreover, Birch states that to date, there are no criminal proceedings pending against the Petitioner in any jurisdiction.

The filing was made in connection with an internal corporate reorganization by which Birch will serve consumer and single-line business customers in New Jersey, if authorized as a CLEC, and its parent company, BCI will serve larger business customers located in New Jersey. Petitioner seeks authority to provide facilities-based and resold local exchange and intrastate interexchange telecommunications services to residential and single-line business customers throughout the State of New Jersey. These services include but are not limited to basic local exchange service bundled with custom calling features such as caller ID, call waiting, toll-free service etc., which also can be bundled with intrastate long distance service. Petitioner also will provide directory assistance, local operator service, busy line verification and emergency interruption service, switched exchange access services to other carriers and directory listings to retail customers in New Jersey. Birch will rely on resale, unbundled network elements ("UNEs"), incumbent local exchange carrier ("ILEC") UNE-replacement services, and other ILEC local service elements to provide telecommunications services within New Jersey. Petitioner will provide access to E-9-1-1 emergency services in New Jersey using leased facilities, its own facilities, and its interconnection and other contractual relationship with ILECs. Petitioner has no immediate plans to build facilities in New Jersey. Petitioner will maintain an accessible toll-free number for customer service.

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 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 Atlanta, Georgia.

² See, In the Matter of the Petition of Birch Communications, Inc. for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Order, Dkt No. TE09040307 (July 1, 2009).

By letter dated December 21, 2017, the New Jersey Division of 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, and does not object to a grant of the waiver requested in connection with record-keeping by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and place under seal. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide local exchange and intrastate interexchange telecommunications services to residential and single-line business customers throughout the State of New Jersey.

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, 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 Competitive Local Exchange Carrier ("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 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" pursuant to the New Jersey Telecommunications Act of 1992. 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 Birch's petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide facilities-based landline CLEC services only, 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 local exchange and intrastate 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.

The Board **HEREBY ORDERS:**

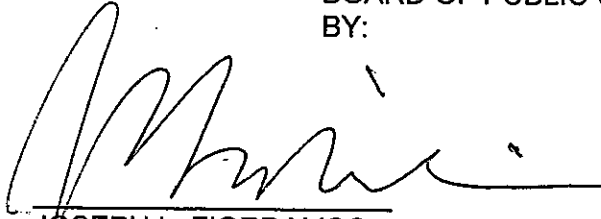
- 1) Petitioner shall provide notice to the Board of its website link which contains the terms and conditions of its competitive local exchange telecommunications services within five (5) days from the effective date of a Board Order. To ensure service quality, Petitioner shall notify the Board within 10 days from the date it begins service to New Jersey customers;
- 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. 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;
- 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.
- 4) 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
- 5) 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 to 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 June 1, 2018.

DATED: 5/22/18

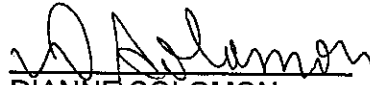
BOARD OF PUBLIC UTILITIES
BY:



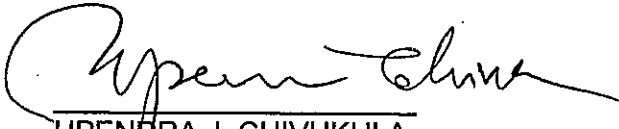
JOSEPH L. FIORDALISO
PRESIDENT



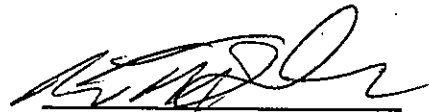
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DIANNE SOLOMON
COMMISSIONER

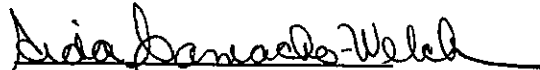


UPENDRA J. CHIVUKULA
COMMISSIONER



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 BIRCH COMMUNICATIONS OF THE NORTHEAST, LLC. PETITION
FOR AUTHORITY TO PROVIDE LOCAL EXCHANGE AND INTRASTATEINTEREXCHANGE
TELECOMMUNICATIONS SERVICES WITHIN THE STATE OF NEW JERSEY**

DOCKET NO. TE17121242

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