



Agenda Date: 3/9/22  
Agenda Item: IC

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**44 South Clinton Avenue, 1<sup>st</sup> Floor**  
**Post Office Box 350**  
**Trenton, New Jersey 08625-0350**  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF BAI )  
COMMUNICATIONS US HOLDINGS NJ LLC FOR )  
AUTHORITY TO PROVIDE COMPETITIVE LOCAL )  
EXCHANGE TELECOMMUNICATIONS SERVICES IN )  
THE STATE OF NEW JERSEY ) ORDER  
  
DOCKET NO. TE21121250

**Parties of Record:**

**Brian O. Lipman, Esq., Director**, New Jersey Division of Rate Counsel  
**Michael A. Gruin, Esq.**, Attorney for BAI Communications US Holdings NJ LLC

BY THE BOARD:

On or about December 20, 2021, BAI Communications US Holdings NJ LLC (“Petitioner” or “BAI”) filed a verified petition (“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.*, the Federal Telecommunications Act of 1996 (“Federal Act”), Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1999) and the Board’s rules, N.J.A.C. 14:1 *et seq.*, seeking authority for BAI to operate as a competitive local exchange carrier (“CLEC”) and to provide facilities-based and resold competitive local exchange telecommunications services throughout the State of New Jersey.

**BACKGROUND**

BAI is a privately held Limited Liability Company organized under the laws of the State of Delaware. Its operations will be managed by its affiliate, Mobilitie, LLC.<sup>1</sup> In addition, in 2016 the Board granted CLEC authority to BAI’s other affiliate, Mobilitie Management, LLC under Docket

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<sup>1</sup> Mobilitie, LLC was granted CLEC authority on April 27, 2011. In the Matter of the Petition of Mobilitie, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services Throughout the State of New Jersey, Docket No. TE10100771 (Order dated April 27, 2011). On July 1, 2021, Mobilitie, LLC filed a letter petition with the Board requesting the cancellation of its CLEC authority.

No. TE16040304.<sup>2</sup> BAI is majority owned indirectly by Frequency Infrastructure Australia Holdings Pty Limited (“FIAHPL”). Additionally, FIAHPL is ultimately owned and controlled by the Canada Pension Plan Investment Board, which holds a wide variety of investments in a multitude of business segments across the globe. Petitioner’s principal office is located at 660 Newport Center Drive, Suite 200, Newport Beach, California 92660.

Petitioner has submitted a copy of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to Transact Business in New Jersey as a Foreign Limited Liability Company. Petitioner is not currently licensed or certificated as a telecommunications carrier in any state. Petitioner has not been denied authority to provide telecommunications services in any state. There are not any pending or existing civil or criminal proceedings against Petitioner in any jurisdiction.

According to the Petition, Petitioner has not entered into an interconnection agreement with Incumbent Local Exchange Carrier (“ILECs”) because BAI does not anticipate exchanging traffic with the public switched telephone network in the near term. However, upon being granted authority by the Board and changing operational plans and customer needs, Petitioner indicated its intent to initiate interconnection agreement discussions, if necessary to support its operations, with appropriate ILECs in the State of New Jersey.

Petitioner seeks authority to offer facilities-based and resold telecommunications services to transmit voice and/or data traffic from customer sites to points of interconnection and traffic exchange using a combination of facilities-based and resold fiber optic networks and microwave facilities to business customers in the State of New Jersey. In conjunction with its service offering, Petitioner plans to construct and operate communications infrastructure, including towers, mini-macro structures, distributed antennas system networks, Wi-Fi systems, other wireless transmitters and antennas, and related fiber optic networks in and around sites and venues such as arenas, convention centers, transportation centers and associated transit systems, hotels, education campuses, office buildings, hospitals, and housing facilities. Through this Petition, BAI is seeking authority to transmit traffic from such sites and venues to points of interconnection and traffic exchange using fiber optic networks and microwave facilities. Petitioner intends to solicit customers for these services from its existing customer base, and through business-to-business marketing such as professional trade shows.

At both the one (1) and five (5) year milestones, BAI anticipates offering facilities based and resold telecommunications services to business customers in New Jersey, with a focus on arenas, convention centers, transportation centers and associated transit systems, hotels, education campuses, office buildings, hospitals, and housing facilities. However, at this time, BAI has no plans to market or provide residential services. Petitioner’s tariff detailing the terms, conditions, and prices of its proposed service offerings has been filed simultaneously with the Petition. The Petitioner maintains a toll free number for customer service inquiries.

Petitioner also requests a waiver of N.J.S.A. 48:3-7.8, which require that books and records be kept within the State of New Jersey. For administrative efficiencies, Petitioner requests permission to maintain and keep all financial books, records, documents and other writings

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<sup>2</sup> In the Matter of the Petition of Mobilitie Management, LLC for Authority to Provide Competitive Local Exchange Carrier Services in the State of New Jersey, Docket No. TE16040304 (Order dated June 29, 2016).

incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's business offices located in Newport Beach, California.

By letter dated January 10, 2022, 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 waivers requests in connection with record-keeping by Petitioner. Accordingly, Rate Counsel does not oppose the Board granting Petitioner's requests in this matter.

### **DISCUSSION AND FINDINGS**

On February 8, 1996, the Federal Act 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 the 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, pursuant to the 1992 Act, 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." N.J.S.A. 48:2-21.16(a)(4), (b)(1) and (b)(3).

Therefore, having reviewed BAI's Petition and the information supplied, the Board **FINDS** that Petitioner, with respect to its request to provide competitive local exchange 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 local exchange 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 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:**

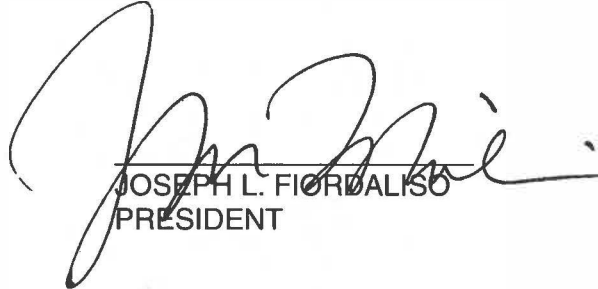
- 1) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner shall post the terms and conditions of its retail competitive services on its website in a publicly-available location, and shall also provide a printed copy of those terms and conditions to a customer upon request of the customer.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

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 March 16, 2022.

DATED: March 9, 2022

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER



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ATTEST:   
AIDA CAMACHO-WELCH  
SECRETARY

**IN THE MATTER OF THE PETITION OF BAI COMMUNICATIONS US HOLDINGS NJ LLC  
FOR AUTHORITY TO PROVIDE COMPETITIVE LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW JERSEY**

**DOCKET NO. TE21121250**

**SERVICE LIST**

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