



Agenda Date: 10/29/18
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 THE APPLICATION OF)
BRIGHTPACKET, INC. FOR AUTHORIZATION TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)
ORDER
DOCKET NO. TE18070786

Parties of Record:

Joseph Isaacs, Chief Regulatory Officer, ISG Telecom Consultant 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 Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated July 16, 2018, Brightpacket, Inc. ("Petitioner" or "Brightpacket") filed a petition with the New Jersey Board of Public Utilities ("Board") for authority to provide facilities-based and resold competitive local exchange access and non-dominant interexchange services throughout the State of New Jersey. Petitioner at this time 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

Brightpacket is a privately held corporation organized under the laws of the State of California. Petitioner's principal offices are located at 1055 W. 7th Street, 33rd Floor, Suite 31, Los Angeles, California 90017. Bright Packet Corporation was initially registered in the State of New Jersey as California Foreign Profit Corporation. On June 6, 2018, the company filed Amended Certificate of Authority changing its legal status to Bright Packet, Inc.

Petitioner has submitted copies of its Articles of Incorporation and Certificate of Good Standing from the State of California and its Amended Certificate of Authority from the State of New Jersey to Transact Business as a Foreign Profit Corporation. Petitioner has additional pending Applications/Petitions for authorization to provide telecommunications services in the State of New York and California. Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal proceedings.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 has begun negotiation with Verizon New Jersey, Inc. for an interconnection agreement and believes that such negotiation will be finalized upon approval of its petition for authority.

Petitioner seeks authority to provide facilities-based and resold competitive local exchange and access services, as well as facilities-based and resold interexchange services to business customers only throughout the State of New Jersey. Petitioner specifically will provide competitive local transport services. Petitioner will deploy its networks by using combination of its own equipment and services purchased from other telecommunications companies and reselling them at least initially to wireless carriers. Petitioner also installs and operates equipment to support backhaul services at least initially for wire-line and Voice over Internet Protocol service providers. Petitioner will provide its services using backhaul linked by fiber optic cables with conversion equipment attached to poles, wires, fiber termination equipment, and other structures. Petitioner states that its services are designed in part to use wire line telecommunications to fill gaps in data coverage without requiring the construction of major facilities. Although Petitioner does not initially intend to provide voice services to end-use subscribers, should it do so in the future, Petitioner will provide either directly or through arrangement with others, access to: 9-1-1 and E-9-1-1; telecommunications relay; directory assistance; operator; and non-discriminatory interconnection services with other local exchange carriers. Petitioner maintains a toll-free number for customer service inquiries which is open twenty-four hours a day, seven days a week. The company plans to post its tariffs on its website 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. 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 Los Angeles, California.

By letter dated August 29, 2018, 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. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide local exchange and interexchange 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 Brightpacket’s petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide local exchange access and interexchange services to business customers only, is in compliance with the Board’s filing requirements to provide landline local exchange and interexchange telecommunications services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide local exchange access and 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 or file initial tariff which contains the terms and conditions of its current competitive local exchange telecommunications services offering 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;

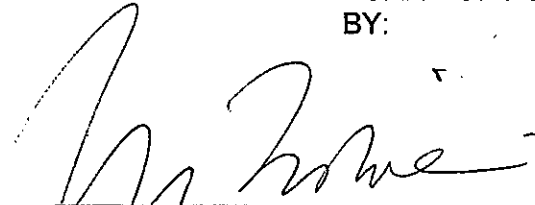
- 2) Petitioner shall provide notice to the Board of its website link or file initial tariff which contains the terms and conditions of its competitive local exchange and interexchange telecommunications services to end-use subscribers before commencing/offering retail local exchange services to end-use 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 or file initial tariff which contains the terms and conditions of offering 9-1-1 and E-9-1-1 services when Petitioner begins offering retail local exchange services to end-use subscribers to ensure that Petitioner's owned/leased facilities is equipped with providing 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. Petition 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.

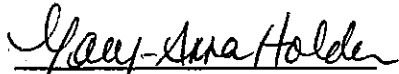
This Order shall be effective November 8, 2018.

DATED: 10/29/18

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

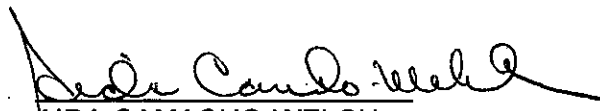


UPENDRA J. CHIVUKULA
COMMISSIONER



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 THE APPLICATION OF BRIGHTPACKET, INC. FOR
AUTHORIZATION TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE18070786

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