



Agenda Date: 8/7/19
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 VERIFIED PETITION OF)
FIRSTLIGHT FIBER, INC. FOR AUTHORITY TO)
PROVIDE FACILITIES-BASED LOCAL EXCHANGE,)
INTEREXCHANGE AND PRIVATE LINE)
TELECOMMUNICATIONS SERVICES IN THE STATE)
OF NEW JERSEY)

ORDER

DOCKET NO. TE19050638

Parties of Record:

James H. Laskey, Esq., Norris McLaughlin P. A.
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 May 21, 2019, FirstLight Fiber, Inc. ("Petitioner" or "FirstLight") filed a verified petition with the New Jersey Board of Public Utilities ("Board") for authority to provide facilities-based local exchange, interexchange and private line telecommunications services throughout the State of New Jersey. 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

FirstLight is a privately held Company organized under the laws of the State of Delaware. FirstLight is 100% owned by FirstLight Holdco, Inc. Petitioner's principal offices are located at 41 State Street 10th Floor, Albany, New York 12207.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Conduct Business in New Jersey as a Foreign Corporation. Petitioner is currently authorized to provide intrastate telecommunications services in Maine, Massachusetts, New Hampshire, New York, Pennsylvania and Vermont.

Petitioner states that in the last twelve months, the following complaints were filed against FirstLight.

Maine: One (1) complaint filed in Maine regarding line height was resolved to the satisfaction of the customer.

New Hampshire: Four (4) complaints filed with the New Hampshire Public Utility Commission (PUC), regarding number porting, caller ID, lines out of service, and disconnection of calls. All four (4) complaints were resolved to the customers' satisfaction.

Vermont: One (1) complaint filed with the Vermont PUC regarding discontinuation of an email address was resolved to the satisfaction of the customer.

New York State (NYS) Public Service Commission (PSC): Two (2) complaints filed with the NYS PSC regarding number porting and delayed installation of service were resolved to the customers' satisfaction. One (1) complaint is pending before the NYS PSC regarding billing, which Petitioner has addressed and is awaiting resolution.

Federal Communication Commission (FCC): One (1) complaint filed with the FCC regarding number porting has been resolved.

Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and 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 does not have an interconnection agreement with any incumbent local exchange carrier. However, upon approval of its Petition, Petitioner will negotiate and enter into an interconnection agreement with Verizon New Jersey ("VNJ").

Petitioner seeks authority to provide facilities-based local exchange, interexchange and private line telecommunications services to and from all points throughout the State of New Jersey. As stated above, upon approval of its petition, Petitioner will enter into an interconnection agreement with VNJ. Initially such agreement will be used to facilitate delivery of high-speed data communications. Petitioner's primary activity will be to provide high capacity private line services, local exchange services, long distance services, high-speed internet and data services to enterprise, wholesale government entities and other carriers. This activity will require the deployment of a fiber network. In the event Petitioner offers switched voice or dial tone local exchange service to residential customers in the future, VNJ's leased facilities are equipped to provide E-9-1-1 services to end user customers in accordance with FCC guidelines. Petitioner does not currently own or control telephone network facilities nor does it have facilities under construction in New Jersey. Petitioner will provide its services and negotiate rates with customers on a case-by-case basis. Petitioner states that it does not currently serve customers in New Jersey, but will comply with all applicable regulations when it will commence operation.

Petitioner maintains a toll-free number for customer service inquiries and will provide information regarding the relevant rates, terms and conditions of its services on its website at www.firstlight.net following 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 Albany, New York.

By letter dated July 8, 2019, 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, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide facilities-based local exchange, interexchange and private line telecommunications services in 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 FirstLight's petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide facilities-based local exchange, interexchange and private line 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 facilities-based local exchange, interexchange and private line 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.

Regarding FirstLight's request that its information be treated confidentially, the Board makes no finding and directs that the information be considered in accordance with the Board's rules at N.J.A.C. 14:1-12 et seq.

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 must post the terms and conditions of its retail competitive services on its website in a publically-available location, and must 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 service when Petitioner begins offering retail local exchange services to end-use subscribers 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 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.

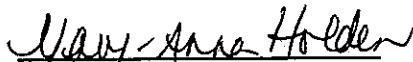
Petitioner additionally requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3. Petitioner seeks authority to keep its books and records outside the State of New Jersey and in accordance with GAAP. The request was noticed and unopposed. Upon review, the Board **FINDS** that the Petitioner demonstrated 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 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.

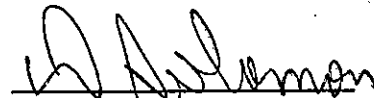
This Order shall be effective August 17, 2019.

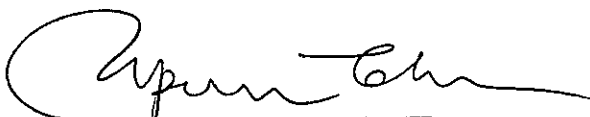
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BOARD OF PUBLIC UTILITIES
BY:

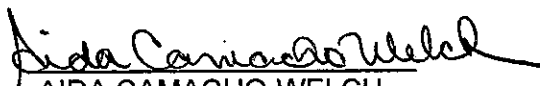

JOSEPH L. FIORDALISO
PRESIDENT


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 VERIFIED PETITION OF FIRSTLIGHT FIBER, INC. FOR
AUTHORIZATION TO PROVIDE FACILITIES-BASED LOCAL EXCHANGE,
INTEREXCHANGE AND PRIVATE LINE TELECOMMUNICATIONS SERVICES IN THE
STATE OF NEW JERSEY**

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SERVICE LIST

Mary Burgess
Director, Legal & Regulatory
FirstLight Fiber, Inc.
41 State Street 10th Floor
Albany, NY 12207
mburgess@firstlight.net

James H. Laskey, Esq.,
Norris McLaughlin P. A.
400 Crossing Blvd., 8th Floor
Post Office Box 5933
Bridgewater, N J 08807-5933
jlasky@norris-law.com

Division of Rate Counsel
Post Office Box 003
Trenton, New Jersey 08625-0003

Stefanie A. Brand, Esq., Director
sbrand@rpa.state.nj.us

Maria T. Novas-Ruiz, Esq.
Mnovas-ruiz@rpa.state.nj.us

Department of Law & Public Safety
Division of Law
Post Office Box 45029
Newark, New Jersey 07101-45029

Caroline Vachier, Chief, DAG
Caroline.vachier@law.njoag.gov

Patricia Krogman, DAG
Patricia.krogman@law.njoag.gov

Renee Greenberg, DAG
Renee.greenberg@law.njoag.gov

Board of Public Utilities
Post Office Box 350
Trenton, New Jersey 08625-0350

Aida Camacho-Welch
Secretary of the Board
Board.secretary@bpu.nj.gov

Division of Audits
Alice Bator, Director,
Alice.bator@bpu.nj.gov

William Foley, Bureau Chief
William.foley@bpu.nj.gov

Naren K. Ravaliya, AA 4 – Accounting
Naren.ravaliya@bpu.nj.gov

**Office of Cable Television and
Telecommunications**
Lawanda Gilbert, Director
Lawanda.gilbert@bpu.nj.gov

Harold Bond, Chief Engineering and Rates
Harold.bond@bpu.nj.gov

Alan Molner, AA-4
Alan.molner@bpu.nj.gov

Counsel's Office
Carol Artale, Esq.
Deputy General Counsel
Carol.artale@bpu.nj.gov

Lanhi Saldana, Esq.
Lanhi.saldana@bpu.nj.gov

Office of Case Management
Karriemah Graham, Chief
Karriemah.graham@bpu.nj.gov