



Agenda Date: 1/27/21
Agenda Item: IA

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 THE VERIFIED PETITION OF)
UNITI NATIONAL LLC FOR AUTHORIZATION TO)
PROVIDE COMPETITIVE LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES IN THE STATE OF NEW JERSEY) ORDER

DOCKET NO. TE20100663

Parties of Record:

James H. Laskey, Esq., Attorney for Uniti National LLC
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Pursuant to the New Jersey Telecommunications Act of 1992 (“1992 Act”), N.J.S.A.48:2-21.16 et seq., and the Federal Telecommunications Act of 1996 (“Federal Act”), Pub. L. No. 104-104, 1110 Stat.56 (1996), and by letter dated October 19, 2020, Uniti National LLC (“Petitioner” or “Uniti National”) filed a verified petition (“Petition”) with the New Jersey Board of Public Utilities (“Board”). The Petition seeks authority for Uniti National to operate as a competitive local exchange carrier (“CLEC”) and to provide competitive local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner does not seek to terminate any small or rural exemptions existing under section 251(f)(1) of Federal Act. However, Petitioner seeks statewide authority so that it may expand its service areas as those areas become open to competition.

BACKGROUND

Uniti National is a privately held Limited Liability Company organized under the laws of the State of Delaware and, is a direct wholly owned subsidiary of Uniti Group, Inc. (“Uniti Group”), a Maryland Corporation. Uniti Group is a publicly traded real estate investment trust that engages in the acquisition and construction of infrastructure utilized by the communications industry. Uniti Group does not provide telecommunications services in its own right. It owns and operates a number of licensed telecommunications providers in the District of Columbia and other states. In New Jersey, PEG Bandwidth NJ, LLC (“PEG NJ”), also a wholly owned, direct subsidiary of Uniti Group and sister subsidiary of the Petitioner, is authorized to provide local exchange and

interexchange services on August 15, 2012.¹ Uniti Group also holds authorization from the Federal Communications Commission (“FCC”) to provide domestic (interstate) telecommunications services. Petitioner and its Parent’s headquarter offices are located at 10802 Executive Center Drive, Benton Building Suite 300, Little Rock, Arkansas 72211.

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 currently authorized to provide intrastate telecommunications services in Georgia and Kentucky and plans to apply for authorization in Alabama, Colorado, Delaware, Florida, Maine, Maryland, Massachusetts, North Carolina and Tennessee. Petitioner has not had a certification or authorization denied, suspended, terminated, or revoked by any state. According to Petitioner, 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 any current plans to provide switched voice local retail services or switched voice interexchange services to end user customers in New Jersey. Hence, Petitioner has not commenced negotiations to enter in to an interconnection agreement with any incumbent local exchange carriers in New Jersey. Should the Petitioner undertakes arrangements requiring an interconnection agreement in the future, it will file the same with the Board pursuant to all applicable requirements.

Petitioner seeks authority to provide competitive facilities-based and resold local exchange and interexchange services primarily to enterprise and carrier customers or other third parties throughout the State of New Jersey. Petitioner will acquire certain fiber optic assets like telephone plant, line or system from certain of Windstream Holdings Inc.’s CLEC subsidiaries (Collectively, “Windstream”) and will grant twenty (20) years Indefeasible Right of Use (“IRU”) to Windstream for those fiber assets that Windstream uses to provide services.² Petitioner will have access to lease, sell or otherwise utilize those fiber assets that are not being granted back to Windstream. Petitioner may sublease those facilities to one or more of its affiliates that have operating authority to do business in New Jersey or using the spare capacity on fiber assets not granted to Windstream via the IRU. Petitioner may itself provision services to business customers, other carriers, or other third parties. Petitioner does not currently anticipate providing any service besides private line services such as high-capacity backhaul Ethernet, but may provide other arrangements such as dark fiber, fiber spectrum leases, or other high capacity services. Currently Petitioner does not have facilities in New Jersey or plans to deploy additional facilities. Upon certification, and prior to commencing service, Petitioner will post in its website the relevant rates, terms and conditions as required by the Board’s rules. The Petitioner services is available 24 hours/day and 365 days/year. The Petitioner maintains toll free number for customer service inquiries.

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

¹ IMO the Petition of PEG Bandwidth NJ, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, Docket No. TE12040317 issued on August 15, 2012.

² See Order, IMO the Verified Joint Petition of Cavalier Telephone Mid-Atlantic, LLC, and Intellifiber Networks, LLC, Sellers and Uniti Group Finance Inc. and Uniti National Purchasers, for Approval for Sellers to Transfer Certain Assets to Purchasers, Docket No. TM20050374 dated July 15, 2020.

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 Little Rock, Arkansas.

By letter dated December 17, 2020, 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 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

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, pursuant to the New Jersey Telecommunications Act of 1992, 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 Uniti National’s Petition and the information supplied, the Board **FINDS** that Petitioner, with respect to its request to provide local exchange and interexchange 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 local exchange 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 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 ten (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 its Legacy 9-1-1, E-9-1-1 and NG9-1-1 service to ensure that Petitioner's owned/leased facilities are equipped to provide reliable and functional access to 9-1-1, E-9-1-1 and NG9-1-1 services to subscribers. To ensure service quality, Petitioner shall notify the Board within ten (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 the Division of Rate Counsel, respectively.

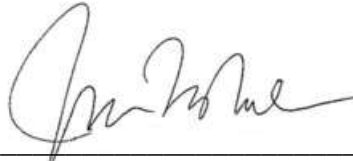
Petitioner additionally requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3. Petitioner seeks authority to keep its books and records outside the State of New Jersey and in accordance with GAAP. The request was noticed and unopposed. Upon review, the Board **FINDS** that the Petitioner demonstrated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

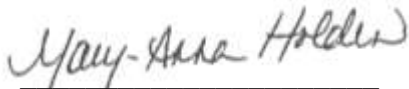
This Order shall be effective February 6, 2021.

DATED: January 27, 2021

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

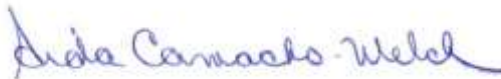


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF VERIFIED PETITION OF UNITI NATIONAL LLC FOR AUTHORIZATION
TO PROVIDE COMPETITIVE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW JERSEY**

DOCKET NO. TE20100653

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