



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 PETITION OF ANOVA)
TECHNOLOGIES, LLC FOR APPROVAL TO PROVIDE) ORDER
LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY) DOCKET NO. TE12080733

Parties of Record:

Kieran Athy, CTO, Anova Technologies, LLC, 111 E. Wacker Drive, Suite 512, Chicago, Illinois 60601, for Petitioner

Stefanie A. Brand, Esq., Director, 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 August 1, 2012, Anova Technologies, LLC ("Petitioner" or "Anova") filed a Verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide resold and facilities-based local exchange and interexchange 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. 14:1-12.1 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Anova is a limited liability company organized under the laws of the State of Illinois and is a wholly owned subsidiary of SMG Holdings, LLC. Michael Persico is the Principal Owner and Manager of Anova and operates owns and controls SMG Holdings, LLC. Petitioner's principal offices are located at 111 East Wacker Drive, Suite 512, Chicago, Illinois 60601.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Illinois and its New Jersey Certificate of Authority to operate as a foreign limited liability company. Petitioner has not applied for and is not currently authorized to provide telecommunications services in any other jurisdiction. Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction, and it has not been the subject of any civil or criminal proceedings.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 intends to enter into an

interconnection agreement with Incumbent Local Exchange Carriers ("ILEC") upon approval of its petition for authority.

Petitioner seeks authority to provide resold and facilities-based local exchange and interexchange telecommunications services to enterprise and carrier customers requiring fiber optic connectivity between business operations and data centers throughout the State of New Jersey. Petitioner plans to accomplish this by utilizing its own facilities and/or facilities leased from New Jersey ILECs. Petitioner plans to provide dark fiber and interconnection as its initial service offerings and engage in the installation of fiber optic technology for the communications industry in the private sector. Petitioner intends to initially operate as a contractor in the Northeast Region, however, it will consider further expansion of its fiber optic facilities based on customer demand.

Petitioner may extend its service offerings to include lit fiber services. Petitioner's business and network plans require market entry via resold local exchange and interexchange carrier facilities, and the provision of local exchange and interexchange services by purchasing unbundled network elements, or equivalents thereof, from the ILECs. Petitioner's services include, but are not limited to, private lines, end user voice and data applications, including a full range of vertical features and functions such as call waiting and forwarding, conference calling, emergency services, etc., and a full array of resold ILEC services which will be provided via the installation of its own facilities and/or facilities leased from New Jersey ILECs. Petitioner maintains a toll-free number for customer service inquiries. Petitioner will file a proposed tariff with the Board.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3, which requires 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. Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all 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 Chicago, Illinois. Petitioner also states, upon written notice from the Board and/or Board Staff, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, Anova states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel, who, according to Anova, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

By letter dated September 12, 2012, the Division of Rate Counsel advised the Board that it is satisfied that the Verified Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity. Relying on N.J.A.C. 1:1-5.1 and New Jersey Court

Rule 1:21-1(c), however, Rate Counsel recommends that the Board deny the petition because it was not filed by an attorney licensed in New Jersey. Id. at 1-3.

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, removing barriers to competition 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).

Any grant of authority is subject to the right of the Board as the state regulatory authority to impose requirements necessary to protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers. 47 U.S.C. § 253(c).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets of qualified applicants. 47 U.S.C. § 253(a). The Board also considers the New Jersey State Legislature’s declaration that it is the policy of the State to provide 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.” N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Regarding Rate Counsel’s assertion that Anova’s petition should have been filed by an attorney licensed in New Jersey, the Board notes that Rate Counsel’s cited authorities do not apply, because this petition does not involve a contested-case proceeding. See R. 1:21-1(f); N.J.A.C. 1:1-5.4.

Therefore, having reviewed Anova’s Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board’s filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide local exchange and interexchange telecommunications services throughout the State of New Jersey.

The Board also FINDS that in accordance with N.J.S.A. 48:2-59 and 48:2-60 and N.J.S.A. 52:27EE-52, the Petitioner is subject to an annual assessment by both the Board and the Division of Rate Counsel, respectively. The Board notes that the Petitioner will not be permitted to offer dark fiber, fractional dark fiber and lit fiber telecommunications services until a tariff is filed with the Board. However, Petitioner won’t be relieved from its responsibility to file an Annual Report and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year and payment of annual assessment to both the Board and the New Jersey Division of Rate Counsel.

The Board HEREBY ORDERS that:

- 1) Petitioner shall file its tariff with the Board.
- 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. 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.

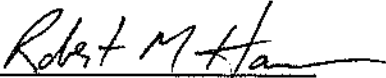
On or before February 1st of each year, the Petitioner will receive from the Division of Audits an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.


Regarding the Petitioner's request for waiver of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintains its books and records in accordance with USOA and in New Jersey.


Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours' notice, and in the manner requested, and to pay to the Board all expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemption from maintaining its books and records in accordance with USOA and in New Jersey.


DATED: 10/4/12


BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

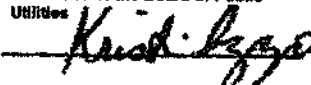

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST: 
KRISTI IZZO
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 PETITION OF ANOVA TECHNOLOGIES, LLC FOR
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND
INTEREXCHANGE TELECOMMUNICATIONS
SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE12080733

SERVICE LIST

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