



Agenda Date: 2/20/13
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 PETITION OF NMG)
TELECOM, LLC FOR AUTHORITY TO PROVIDE) ORDER
LOCAL EXCHANGE TELECOMMUNICATIONS)
SERVICES IN THE STATE OF NEW JERSEY) DOCKET NO. TE12111001

Parties of Record:

Lance J. M. Steinhart, Esq., Lance J. M. Steinhart, P. C., for the 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 November 13, 2012, NMG Telecom, LLC ("Petitioner" or "NMG Telecom") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide both resold and facilities-based Unbundled Network Elements ("UNEs") competitive local exchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its financial information under seal and has filed a Motion for Confidentiality along with 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.

NMG Telecom is a limited liability company organized under the laws of the State of Delaware and is a wholly owned subsidiary of NMG Telecommunications, LLC with principal offices located at 2520 Avenue L, Brooklyn, New York 11210.

Petitioner has submitted copies of its Certificate of Incorporation and Certificate of Good Standing from the State of Delaware and its New Jersey Certificate of Authority to operate as a Foreign Limited Liability Company. Petitioner is in the process of obtaining authority to provide local exchange and interexchange telecommunications services in the states of Florida, Georgia, Illinois, Massachusetts, New York, Pennsylvania and Texas. Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction and it has not been the subject of any civil or criminal proceedings.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 filed a Resale Acknowledgement Letter to provide resold local exchange and interexchange telecommunications services in the State of New Jersey; however, to date it has not commenced providing any telecommunications services. Petitioner has not commenced negotiations to enter into an interconnection agreement with any Incumbent Local Exchange Carriers ("ILECs"). Petitioner intends to provide service upon certification and finalization of an interconnection agreement with the local exchange carriers.

Petitioner seeks authority to provide facilities-based UNEs local exchange telecommunications services to medium and large business customers throughout the State of New Jersey. Petitioner will initially resell and/or provide Local Exchange Services ("LES") utilizing UNEs to its end user customers and as market conditions warrant may augment its service offerings to include some facilities-based services. Petitioner will combine switchless resale, leasing of local loops in conjunction with company owned switching, and/or purchasing of UNEs from Verizon – New Jersey and other carriers. Petitioner also plans to provide services such as basic telephone exchange, data, Internet, digital subscriber line, access, call waiting and forwarding, speed dialing, distinctive ringing, three-way calling, operator services like 911 and E911, directory listing, third party calling arrangement, local calling and per use services such as call return and redial services to both residential and business customers throughout the State of New Jersey.

Petitioner will rely upon the managerial and technical expertise of the ILECs and facilities-based interexchange carriers which have been certified and deemed technically and managerially able to provide exchange services by the Board. Petitioner has no current plans to install facilities in the State of New Jersey for the provision of LES and if it decides to install such facilities in the future, it will probably use a similar configuration of equipment to that which is used by the ILECs. The Company 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 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. Petitioner, instead, 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 Brooklyn, New York.

By letter dated December 19, 2012, the Division of Rate Counsel submitted comments with the Board recommending that the Board stay or defer consideration of this matter until the Petitioner provides a toll-free telephone number for customer service for its operations in New Jersey.

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 comments that the "Board stay or defer consideration on this matter, until the Petitioner provides a toll-free telephone number for customer service for its operations in New Jersey", the Board notes that the Petitioner has filed a toll-free number for customer service inquiries for its operation in New Jersey as required by N.J.A.C. 14:3-5.2(a) 1 & 2.

Therefore, having reviewed NMG Telecom'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 telecommunications services throughout the State of New Jersey. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is filed with the Board. Additionally, Petitioner is not relieved from its responsibility to file an Annual Report and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year.

Furthermore, the Board **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 **HEREBY ORDERS**:

- 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.

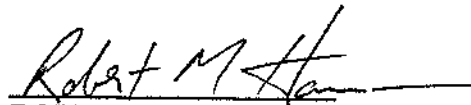
On or before February 1 of each year, the Petitioner will receive from the Division of Audits an annual report package and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information 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 waivers 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 within 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 exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 2/20/13

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

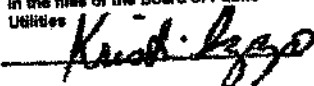

JOSEPH L. FIORDALISO
COMMISSIONER


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 NMG TELECOM, LLC FOR AUTHORITY TO
PROVIDE LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES IN THE
STATE OF NEW JERSEY**

DOCKET NO. TE12111001

SERVICE LIST

Monte Banash
President and Regulatory Contact
NMG Telecom, LLC
2520 Avenue L
Brooklyn, New York 11210

Lance J. M. Steinhart, Esq.
Lance J. M. Steinhart, PC
1725 Windward Concourse, Suite 150
Alpharetta, Georgia 30005

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
31 Clinton Street, 11th Floor
Post Office Box 46005
Newark, New Jersey 07101

Ayelet Hirschkom, DAG
Department of Law & Public Safety
Division of Law
124 Halsey Street, 5th Floor
Post Office Box 45029
Newark, New Jersey 07101

Kristi Izzo
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Dennis J. Moran, Director
Division of Audits
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Valerie Haynes, Bureau Chief
Bureau of Case Management
Office of the Secretary
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350