



Agenda Date: 12/19/12  
Agenda Item: IF

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
Post Office Box 350  
Trenton, New Jersey 08625-0350  
[www.nj.gov/bpu/](http://www.nj.gov/bpu/)

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF RCLEC, INC. )  
FOR APPROVAL TO PROVIDE LOCAL EXCHANGE )  
AND INTEREXCHANGE TELECOMMUNICATIONS )  
SERVICES THROUGHOUT THE STATE OF )  
NEW JERSEY )  
ORDER  
DOCKET NO. TE12090821

Parties of Record:

**John Marlow, CEO, RCLEC, Inc.** 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 September 7, 2012, RCLEC, Inc. ("Petitioner" or "RCLEC") filed a Verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based competitive 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.

RCLEC is a privately held company organized under the laws of the State of Delaware and is a wholly owned subsidiary of Ring Central, Inc. ("Ring Central"), a Hosted Internet Protocol Provider. Petitioner's principal offices are located at 1400 Fashion Island Blvd., 7<sup>th</sup> Floor, San Mateo, California 94404.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to operate as a foreign company. Petitioner is authorized to provide telecommunications service in California, Florida, New York and Texas, its application is pending in Illinois and, it anticipates filing applications for authority in Arizona, Connecticut, Georgia and Pennsylvania. Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction, and it has not been the subject of any civil or criminal proceedings.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 wishes to adopt an interconnection agreement with Verizon, New Jersey upon approval of its petition for authority.

Petitioner's parent, Ring Central, is currently a defendant in a proceeding in federal court in California (J2 and Advanced Messaging Technologies, Inc. v. Ring Central, Inc., United States District Court for the Central District of California, Case No. 2:11-cv-04686-DDP-AJW). This is an intellectual property case involving a patent issue and J2 is seeking a permanent injunction, damages and attorneys' fees should judgment be found against Ring Central. Petitioner states that its parent is currently vigorously defending against these claims. The services provided by Petitioner do not directly infringe any of the patents involved in the J2 case because RCLEC will not be providing the specific telephony services that fall within the scope of the patent.

Petitioner seeks authority to provide facilities-based competitive local exchange and interexchange telecommunications services as a wholesale carrier offering transport services to other providers and enterprise customers throughout New Jersey. Petitioner's primary services include dedicated Internet access, co-locations services, and managed application hosting, web hosting, e-mail services and domain name services. Petitioner does not intend to provide services to residential customers but it does intend to offer service to business customer. These services will be available on a 24-hours-per-day, seven-days-per-week basis.

To support these services, Petitioner is currently constructing a nationwide network, which includes a core structure of transport circuits connected to high-capacity soft switches and media gateways in carrier hotels located in New York, Miami, Los Angeles, San Francisco, Chicago and Dallas. Petitioner will receive and send traffic for New Jersey customers from providers and will route that traffic to its switch and media gateways located in New York. RCLEC will utilize high capacity trunks between Incumbent Local Exchange Carriers ("ILECs") and its own facilities as well as obtaining backhaul facilities from other carriers to connect to ILECs access tandems or other points of interconnections in order to route traffic to and from New Jersey end users of its carrier customers. The company has no telephone network facilities currently under construction in New Jersey since it intends to obtain facilities from other telecommunications carriers. 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 San Mateo, California. 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, RCLEC 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 RCLEC, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

By letter dated October 9, 2012, the Division of Rate Counsel advised the Board that it “does not object to the grant of RCLEC’s Verified Petition as soon as it has retained representation by New Jersey counsel.” Id. at 2. Relying on N.J.S.A. 1:1-5.1 and New Jersey Court Rule 1:21-2, Rate Counsel notes that “the application is deficient due to the lack of representation by New Jersey counsel,” and therefore “the Board should defer action on this application . . .” Id. at 1.

## **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 RCLEC’s petition “is deficient due to the lack of representation by a New Jersey counsel,” the Board notes that the cited authorities are not applicable to this petition, as it does not constitute a contested-case proceeding as defined in N.J.S.A. 52:14B-2.<sup>1</sup>

Therefore, having reviewed RCLEC’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.

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<sup>1</sup> N.J.A.C. 14:1-9.5 and N.J.A.C. 14:1-3.1 permit a non-attorney to file a Petition before the Board in uncontested cases.

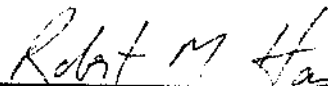
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31st of each year, which is due on or before March 31st of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to file an annual report by the due date, Petitioner 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 31st of each year, which is due on or before June 1st of the following year.

On or before February 1<sup>st</sup> 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 31st of each year. The annual report and a statement of gross intrastate revenues from operations form are due on or before March 31st and June 1st 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: 12/19/12

BOARD OF PUBLIC UTILITIES  
BY:

  
ROBERT M. HANNA  
PRESIDENT

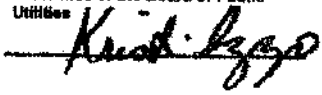
  
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ATTEST:   
KRISTI IZZO  
SECRETARY

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 RCLEC, INC. FOR  
AUTHORITY TO PROVIDE LOCAL EXCHANGE AND  
INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE12090821

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