



Agenda Date:11/30/11
Agenda Item: IA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, NJ 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF LIBERTY-BELL)
TELECOM, LLC D/B/A DISH NETWORK PHONE &)
INTERNET FOR APPROVAL TO PROVIDE LOCAL)
EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE11100672

Parties of Record:

Andrew O. Isar, Regulatory Consultant, Miller Isar, Inc., Gig Harbor, Washington, 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 October 18, 2011, Liberty-Bell Telecom, LLC d/b/a DISH Network Phone & Internet ("Petitioner" or "Liberty-Bell") filed a verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide competitive, facilities-based and non-facilities-based local exchange, facilities-based switched exchange access, and non-facilities-based interexchange telecommunications services to subscribers 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. 14:1-12.1 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

Liberty-Bell is a privately held limited liability company organized under the laws of the State of Colorado. Petitioner is a subsidiary of Liberty Bell, LLC ("LB LLC"). In January, 2011, DISH Media Holdings Corporation ("DISH Media") acquired a 90% stake in LB LLC. The remaining 10 percent ownership in LB LLC is held by 21 individuals with no person having greater than a 4.86 percent interest. DISH Media is a subsidiary of DISH Network Corporation. Petitioner's principal offices are located at 2460 West 26th Avenue, Suite #380-C, Denver, Colorado 80211.

Petitioner has submitted a copy of its Certificate of Incorporation from the State of Colorado and its New Jersey Certificate of Authority to operate as a Foreign Limited Liability Company. Petitioner currently maintains authority to provide facilities-based local exchange and non-facilities-based interexchange telecommunications services in the States of Alabama, Arizona, Colorado, Idaho, Indiana, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. Liberty-Bell will engage in negotiations

with Verizon New Jersey and CenturyLink to enter into an interconnection agreement for the Unbundled Network Element ("UNE"), UNE Platform replacement and resold services throughout the State of New Jersey.

Petitioner states that it has not been denied authority to provide telecommunications services, and its authority has not been revoked in any jurisdiction. Furthermore, Petitioner asserts that it has not been the subject of civil or criminal proceedings in any jurisdiction. However, Petitioner does state that on December 14, 2010, the Company entered into a consent decree with the Federal Communications Commission ("FCC") (In the Matter of the Liberty Bell LLC, File No. EB-10-1H-3832). The agreement resolved outstanding issues concerning regulatory approvals that had not been obtained for the purchase of Liberty Bell Telecom by MultiLink Telecom, LLC; the securing of an international 214 license; and the transfer of shares by the majority owner in MultiLink. In addition to making a \$30,000 voluntary contribution to the United States Treasury, Petitioner agreed to designate a compliance officer, develop a compliance manual, conduct compliance training, and file quarterly reports with the FCC. A copy of the Consent Decree is attached to Liberty Bell's Petition as Exhibit E.

Petitioner seeks authority to provide competitive, facilities-based and non-facilities-based local exchange, facilities-based switch exchange access, and non-facilities-based interexchange telecommunications services to subscribers throughout the State of New Jersey. Petitioner will serve local exchange subscribers utilizing a combination of Incumbent Local Exchange Carrier ("ILEC") UNE and resold services. Petitioner initially proposes to provide retail local exchange and interexchange telecommunications services to residential subscribers as set forth in the Petitioner's proposed telecommunications tariff. Petitioner proposes to provide local exchange services and related custom calling features, intra and inter local access transport areas toll services, operator assisted calling exclusively to subscribers of record, directory assistance and interexchange services. In conjunction with its local service authority, Petitioner will provide switched exchange access telecommunications services to interconnecting carriers under a separate tariff to be filed for approval prior to service initiation. Petitioner will not offer alternative operator services to the transient public. Applicant will coordinate with the ILEC for the provision of emergency 911 services and directory publication & distribution to the local customers. Petitioner will not construct its own facilities. Its technical ability to provide services rests primarily on the technical capabilities and network services of its underlying carriers that have been certified and deemed technically and managerially capable of providing telecommunications services in New Jersey. Petitioner's service will be available twenty-four hours per day, seven days per week, at rates, terms and conditions established in its initial tariff. Petitioner maintains a toll-free number for customer service inquiries.

Pursuant to N.J.A.C. 14:10-5.6(b), Petitioner has filed an initial tariff concurrently with its petition under Docket No. TT11100673 which will become effective 30 days after the Board approves its petition for local exchange and interexchange authority.

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. In the interest of efficiency and to prevent undue burden, 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 Denver, Colorado. 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.

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, Liberty-Bell 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 Liberty-Bell, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

By letter dated November 7, 2011, the Division of Rate Counsel advised the Board that it “does not object to the grant of Liberty-Bell’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, N.J.A.C. 14:1-3.2, 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 Liberty-Bell’s petition “is deficient due to the lack of representation by New Jersey counsel,” the Board notes that none of the cited authorities applies to this petition, which does not involve a contested-case proceeding. See R. 1:21-1(f); N.J.A.C. 1:1-5.4.

Therefore, having reviewed Liberty-Bell’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 HEREBY ORDERS:

- 1) 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.
- 2) 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 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: 11/30/11

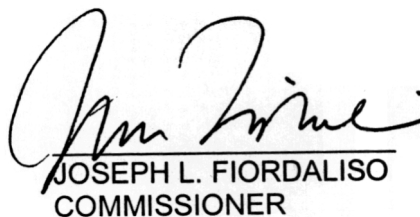
BOARD OF PUBLIC UTILITIES
BY:



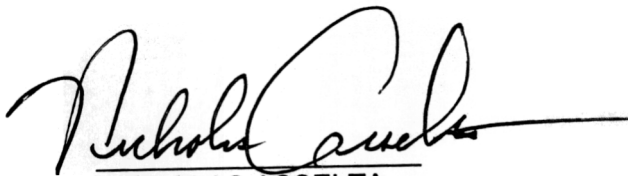
LEE A. SOLOMON
PRESIDENT



JEANNE M. FOX
COMMISSIONER



JOSEPH L. FIORDALISO
COMMISSIONER



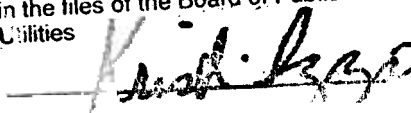
NICHOLAS ASSELTA
COMMISSIONER

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 LIBERTY-BELL TELECOM, LLC
D/B/A DISH NETWORK & INTERNET FOR AUTHORITY TO
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES
IN THE STATE OF NEW JERSEY

DOCKET NO. TE11100672

SERVICE LIST

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