



Agenda Date: 2/11/15  
Agenda Item: IA

**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 HAMMER )  
FIBER OPTIC INVESTMENTS LTD. FOR APPROVAL )  
TO PROVIDE FACILITIES-BASED AND RESOLD )  
LOCAL EXCHANGE AND INTEREXCHANGE )  
TELECOMMUNICATIONS SERVICES )

ORDER

DOCKET NO. TE14121410

**Parties of Record:**

**Dennis C. Linken, Esq.**, Scarinci & Hollenbeck, LLC for Petitioner  
**Stefanie A. Brand, Esq.**, Director, New Jersey 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 December 9, 2014, Hammer Fiber Optic Investments Ltd. ("Petitioner" or "HFOI") filed a Verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based and resold private line dedicated point to point and point to multipoint local exchange and interexchange telecommunications services throughout New Jersey. Petitioner 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 et seq. and in compliance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.

HFOI is a privately held corporation organized under the laws of the State of Delaware. Petitioner has no parent company or affiliated companies. Petitioner's principal offices are located at 789 Farnsworth Avenue, Bordentown, NJ 08505.

Petitioner submitted copies of its Certificates of Incorporation and of Good Standing from the State of Delaware, and its New Jersey Certificates of Good Standing and Authority to operate as a Foreign Corporation. Petitioner is a newly formed company and is not currently operating in any 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 Petitioner states that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction, and it has not been the subject of any civil or criminal proceedings.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 has not begun negotiations

or requested an interconnection/resale agreement with any carriers in New Jersey. Petitioner will begin negotiations to enter into an interconnection agreement with facilities-based carriers as needed for the provision of services.

Petitioner seeks authority to provide facilities-based and resold private line dedicated point to point and point to multipoint local exchange and interexchange telecommunications services throughout New Jersey. Petitioner intends to provide its services to medical facilities, wireless carriers, other carriers, local municipalities, and ultimately to large enterprise businesses through the resale of services purchased from other facilities-based carriers, resale of the services of third parties, as well as through construction and maintenance of its own facilities. Petitioner plans to offer Dark Fiber, Synchronous Optical Network, Optical Private Network, Ethernet and Wavelength Services. Petitioner does not currently have any telecommunications transmission facilities in New Jersey. Petitioner will be purchasing the services of other facilities-based carriers as well as constructing its own facilities. Petitioner plans to design, construct and operate a new fiber network ring in New Jersey. The network will use existing conduit and pole lines owned by other carriers. Petitioner will obtain the necessary permits and obtain right-of-way for these applications. Petitioner's tariff rate for its services will be based on an individual case basis. Petitioner currently has no customers in New Jersey. During its first year of operations, Petitioner will introduce service to wireless carriers with whom it already has business relationships with other states. Within five years, Petitioner expects its presence in New Jersey to grow and expand, permitting an opportunity to consider other competitive services. Petitioner does not intend to offer any outbound dial tone services to residential end-user customers. Petitioner will file its initial tariff upon approval of its petition. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner is a New Jersey based corporation and, in accordance with N.J.S.A. 48:3-7.8 keeps its books and records in Bordentown, New Jersey. Pursuant to N.J.A.C. 14:1-5.15(a)9, it is Petitioner's responsibility to provide the Board books and records 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.

By letter dated January 6, 2015, the New Jersey Division of Rate Counsel submitted comments with the Board stating that, based upon its review, "Rate Counsel is satisfied that the Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity." Id. at 1. In addition, Rate Counsel does not object to a grant of the waivers requested by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. Accordingly, Rate Counsel "does not oppose the Board's grant of authority or approval of the requests contained in the Verified Petition." Id. at 2.

## **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).

Therefore, having reviewed HFOI'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 in the State of New Jersey. Pursuant to N.J.A.C. 14:3-1.3(a), 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, 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**:

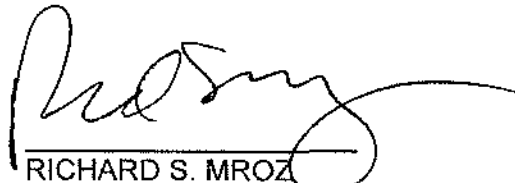
- 1) Petitioner shall file its tariff with the Board.
- 2) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year. Pursuant to N.J.S.A. 48:2-16.3, if Petitioner fails to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


This Order shall be effective February 23, 2015.

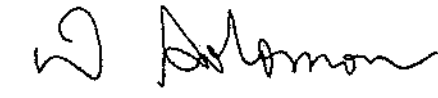
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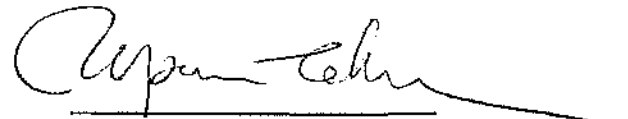
BOARD OF PUBLIC UTILITIES  
BY:

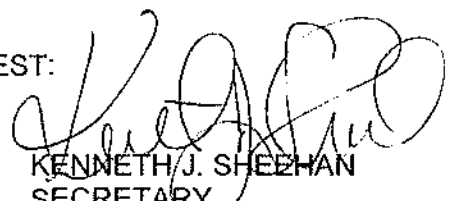
  
RICHARD S. MROZ  
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COMMISSIONER

  
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UPENDRA J. CHIVUKULA  
COMMISSIONER

ATTEST:  
  
KENNETH J. SHEEHAN  
SECRETARY

I HEREBY CERTIFY that the within documents is a true copy of the original in the files of the Board of Public Utilities  


IN THE MATTER OF THE PETITION OF HAMMER FIBER OPTIC INVESTMENTS LTD  
FOR APPROVAL TO PROVIDE FACILITIES-BASED AND RESOLD LOCAL  
EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES

DOCKET NO. TE14121410

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