



Agenda Date: 4/15/15
Agenda Item: IB

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 VERIFIED PETITION OF) ORDER
METRO FIBER CO., LLC, D/B/A AXIOM FIBER)
NETWORKS FOR AUTHORIZATION TO PROVIDE)
FACILITIES-BASED LOCAL EXCHANGE,)
INTEREXCHANGE AND PRIVATE LINE)
TELECOMMUNICATIONS SERVICES IN THE STATE)
OF NEW JERSEY) DOCKET NO. TE15030280

Parties of Record:

James H. Laskey, Esq., Norris McLaughlin & Marcus, P. A. 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 March 4, 2015, Metro Fiber Company LLC, d/b/a Axiom Fiber Networks ("Petitioner" or "Axiom") filed a Verified Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide facilities-based local exchange, interexchange and private line telecommunications services throughout the State of New Jersey. Petitioner submitted its financial information under seal and 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.

Axiom is a privately held limited liability company organized under the laws of the State of Delaware. Petitioner's principal office is located at 405 Lexington Avenue, 48th Floor, New York, New York 10174.

Petitioner submitted copies of its Certificates of Formation from the State of Delaware and its New Jersey Certificates of Authority to operate as a Foreign Limited Liability Corporation. Petitioner is not currently authorized to provide intrastate telecommunications services in any jurisdiction. Its initial business activity will be in the State of New York and New Jersey. Petitioner provides that it has not been denied authority to provide telecommunications services, its authority has not been revoked in any jurisdiction, and it has not been the subject of any civil or criminal proceedings.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 commenced negotiations to enter into an interconnection

agreement with Verizon, New Jersey. Petitioner anticipates that the said negotiations will be complete upon approval of its petition.

Petitioner requests authorization to provide services to and from all points throughout the State of New Jersey that are currently open, and that become open to competition, and eventually provide such services statewide. Petitioner's primary activity will be providing service to data centers located in New York and New Jersey which will require the deployment of a fiber network between these locations. Petitioner initially will target enterprise business customers with a plan to develop and expand networks in Bergen, Hudson, Essex, Union and Middlesex Counties in New Jersey. As business opportunities arise, Petitioner will target other counties in New Jersey. As set forth in the Competitive Exchange Carrier Questionnaire attached to its Petition as Exhibit E, Petitioner plans to "provide telecom infrastructure services focusing on dark fiber services to other service providers and Enterprise business customers." *Id.* at 5. During the first year of its operations, Petitioner plans to focus on establishing New York City franchise, developing a core network in Manhattan, and establishing a network extension into Northern New Jersey. *Ibid.* During years two through five, Petitioner plans to continue to expand the network as opportunities arise "with a goal to create a dense fiber optic network that would tie key data centers and telecom-specific locations as well as Enterprise business sites" in New Jersey and New York. *Ibid.* Upon certification, and prior to commencing service, Petitioner will file the relevant rates, terms and conditions as required by the Board's rules and regulations. Petitioner maintains a toll-free number for customer service inquiries.

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 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 New York, New York.

By correspondence dated March 10, 2015, the New Jersey Division of Rate Counsel submitted comments with the Board providing 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. *Ibid.* 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(b).

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets by 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 "[p]rovide 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 Axiom's Petition and the information supplied in support thereof, the Board **HEREBY 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, interexchange and private line 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.

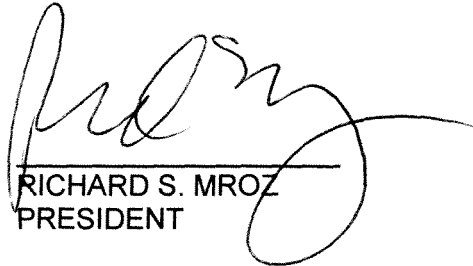
On or before February 1 of each year, the Petitioner will receive from the Division of Audits an annual report package and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year. The purpose of these documents is to report the Petitioner's financial information 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.

Regarding the Petitioner's request for waivers of the Board rules, the Board **HEREBY FINDS** that the Petitioner demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain 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.

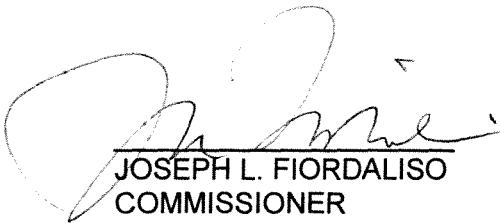
This Order shall be effective April 27, 2015.

DATED: 4/15/15

BOARD OF PUBLIC UTILITIES
BY:



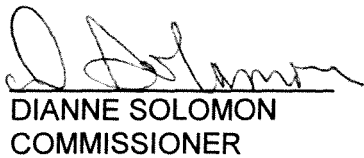
RICHARD S. MROZ
PRESIDENT



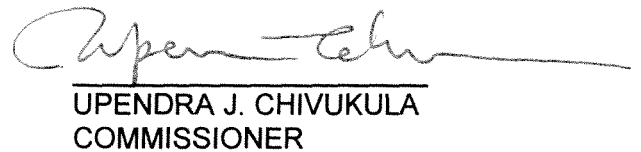
JOSEPH L. FIORDALISO
COMMISSIONER



MARY-ANNA HOLDEN
COMMISSIONER

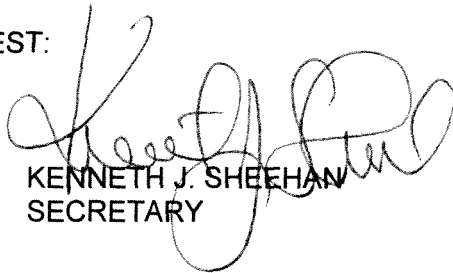


DIANNE SOLOMON
COMMISSIONER



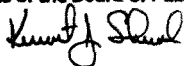
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



KENNETH J. SHEEHAN
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 VERIFIED PETITION OF METRO FIBER COMPANY LLC, D/B/A
AXIOM FIBER NETWORKS FOR AUTHORIZATION TO PROVIDE FACILITIES-BASED
LOCAL EXCHANGE, INTEREXCHANGE AND PRIVATE LINE TELECOMMUNICATIONS
SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE15030280

SERVICE LIST

Patricia Paulo, Vice-President
Business Operations
Metro Fiber Company LLC
D/b/a Axiom Fiber Networks.
405 Lexington Avenue, 48th Floor,
New York, New York 10174

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

James H. Laskey, Esq.
Norris, McLaughlin & Marcus, P. A.
721 Route 202-206, Suite 200
Post Office Box 5933
Bridgewater, New Jersey 08807

Paul Flanagan, Esq.
Executive Director
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350

Stefanie A. Brand, Esq., Director
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, New Jersey 08625-0003

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

Maria T. Novas-Ruiz, Esq.
Division of Rate Counsel
140 East Front Street, 4th Floor
Post Office Box 003
Trenton, New Jersey 08625-0003

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

Patricia A. Krogman, Esq.
Deputy Attorney General
Department of Law & Public Safety
Division of Law
124 Halsey Street
Post Office Box 45029
Newark, New Jersey 07101-45029

Carol Artale, Esq.
Legal Specialist
Counsel's Office
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350