



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)
X5 OPCO LLC FOR AN ORDER OF APPROVAL TO)
PROVIDE COMPETITIVE INTRASTATE)
INTEREXCHANGE, LOCAL EXCHANGE, AND)
SWITCHED ACCESS TELECOMMUNICATIONS)
SERVICES THROUGHOUT THE STATE OF NEW)
JERSEY) DOCKET NO. TE15101214

Parties of Record:

Andrew O. Isar, Consultant, Miller Isar, Inc., for Petitioner
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

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 26, 2015, X5 OpCo LLC (“Petitioner” or “X5 OpCo”) 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, exchange access, and facilities-based and non-facilities-based interexchange telecommunications services throughout the State of New Jersey to subscribers. Petitioner has submitted its financial information under seal and has filed a Motion for Confidentiality and 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.

X5 OpCo is a privately held limited liability company organized under the laws of the State of Delaware. Petitioner is a wholly owned subsidiary of X5 Holdings LLC which, in turn, is majority owned and controlled by NewSpring Holdings LLC which is a private equity fund that seeks to partner with successful business owners and management teams to grow profitable businesses. Petitioner’s principal offices are located at 1008 Western Avenue, Suite 400, Seattle, Washington 98104.

¹ Commissioner Joseph L. Fiordaliso was not present at the December 16, 2015 agenda meeting.

Petitioner has submitted copies of its Certificate of Formation from the State of Delaware and its New Jersey Certificate of Authority to Transact Business as a Foreign Limited Liability Company. Petitioner is currently authorized to provide competitive local exchange and interexchange telecommunications services in the States of Oregon, Utah and Washington. 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. Currently Petitioner has no immediate plans to provide local exchange telecommunications services in New Jersey. However, in the future, should Petitioner decide to do so, Petitioner will initiate negotiations to enter into interconnection agreements with appropriate Incumbent Local Exchange Carriers ("ILECs"). Any such agreements will be filed with the Board.

Petitioner seeks authority to provide facilities-based and non-facilities-based competitive local exchange, switched exchange access, and intra local access transport area ("intraLATA") and inter local access transport area ("interLATA") interexchange telecommunications services to commercial subscribers/ customers in the State of New Jersey. Petitioner does not intend to provide service to residential customers. Petitioner initially proposes to provide interexchange telecommunications services only, including intraLATA and interLATA voice and data services, operator assisted calling exclusively to subscribers of record, and directory assistance, to mid-sized and enterprise subscribers, as set forth in Petitioner's tariff. Petitioner states that should it initiate the provision of local exchange services in the future, it will coordinate with ILECs for the provision of emergency 911 services, directory publications, and directory distribution to local customers. Petitioner will not offer alternative operator services to the transient public. Petitioner currently does not provide telecommunications services in New Jersey. Petitioner will not construct/maintain its own network facilities nor will it deploy facilities in New Jersey. Instead, Petitioner will use a combination of switching equipment and leased transport facilities, as well as resale to provide services. Petitioner's services will be available to subscribers twenty-four hours per day, seven days per week, at rates, terms and conditions established by Petitioner. Petitioner maintains a toll-free number for customer service inquiries. Petitioner's tariff will be posted on the its web site and a link to the its posted tariff will be provided to the Board upon approval of its petition.

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 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 Seattle, Washington.

By letter dated November 13, 2015, the New Jersey Division of Rate Counsel submitted comments to the Board stating that, based on its review, "Rate Counsel is satisfied that the Verified Petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity, and does not oppose Petitioner's . . . waiver requests connected to accounting and record-keeping methods in this matter. . . ." Id. at 1. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide telecommunications services in New Jersey. 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 X5OpCo’s petition and the information supplied in support thereof, the Board **FINDS** that Petitioner is in compliance with the Board’s filing requirements to provide telecommunications services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide local exchange, intrastate interexchange and switched access telecommunications services in the State of New Jersey. Pursuant to N.J.A.C. 14:3-1.3(a), the Board notes that 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, 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.

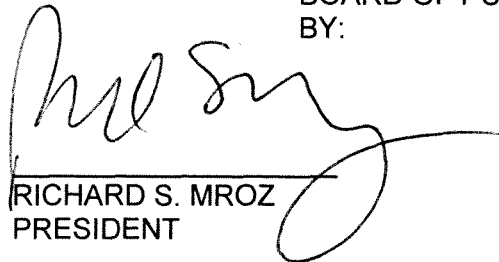
On or before February 1 of each year, Petitioner will receive from the Division of Audits an annual report package and a Statement of Gross Intrastate Revenues from Operations form for the preceding calendar year. The purpose of these documents is to report Petitioner's financial information and gross 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 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 **HEREBY 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 December 26, 2015.


DATED: 12/16/15

BOARD OF PUBLIC UTILITIES
BY:



RICHARD S. MROZ
PRESIDENT


MARY-ANNA HOLDEN
COMMISSIONER

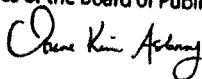

DIANNE SOLOMON
COMMISSIONER


UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:


IRENE KIM ASBURY
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 X5 OPCO LLC FOR AN ORDER OF
APPROVAL TO PROVIDE COMPETITIVE LOCAL EXCHANGE, INTRASTATE
INTEREXCHANGE AND SWITCHED ACCESS TELECOMMUNICATIONS
SERVICES THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE15101214

SERVICE LIST

Don Horton, Regulatory Contact Person
X5 OpCo LLC
1008 Western Avenue
Suite 400
Seattle, Washington 98104
Dhorton@X5Solutions.com

Andrew O. Isar, Regulatory Consultant
Miller Isar, Inc.
4423 Point Fosdick Drive, NW
Suite 306
Gig Harbor, Washington 98335
aisar@millerisar.com

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

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

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
Patricia.Krogman@dol.lps.state.nj.us

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

Irene Kim Asbury, Esq.
Secretary of the Board
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
irene.asbury@bpu.state.nj.us

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
Carol.artale@bpu.state.nj.us

Alan Molner
Division of Telecommunications
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
Alan.molner@bpu.state.nj.us

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
Valerie.haynes@bpu.state.nj.us