



Agenda Date: 12/12/16
Agenda Item: IB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 3rd Floor, Suite 314
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF AIRBUS DS)
COMMUNICATIONS, INC. FOR AUTHORITY TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE16050477

Parties of Record:

Evangelia C. Pelonis, Esq., Keller and Heckman LLP 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 May 26, 2016, Airbus DS Communications, Inc. ("Petitioner" or "Airbus") filed a verified petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide 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 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.

Airbus is a privately-owned corporation organized under the laws of the State of California. Airbus is 100% owned by Plant Holdings, Inc. Petitioner was formerly known as Cassidian Communications, Inc. ("CCI"), which was formerly known as Plant Equipment, Inc. Petitioner filed a Certificate of Amendment and Restatement of Articles of Incorporation on June 26, 2014, changing its legal name from CCI to Airbus. Petitioner's principal offices are located at 42505 Rio Nedo, Temecula, California 92590.

Petitioner has submitted copies of its Certificate of Amendment and Restatement of Articles of Incorporation and Certificate of Good Standing from the State of California and its New Jersey Amended Certificate of Authority to Transact Business as a Foreign Corporation. Petitioner initially received provisional authority to offer Competitive Local Exchange Carrier ("CLEC") service in the Incumbent Local Exchange Carriers ("ILECs") service territories of Verizon Pennsylvania LLC and Verizon North LLC. On June 30, 2016 Petitioner received authority to

provide telecommunications services as a CLEC in ILECs territories throughout the Commonwealth of Pennsylvania. Additionally, Petitioner also received authority to provide telecommunications services in Florida, Maryland, North Carolina, Pennsylvania, Texas and Virginia and, its application for authority is pending in California and New York. Petitioner plans to enter into an interconnection agreement with ILECs to the extent necessary to offer its service upon approval of its petition.

Petitioner states that it has not been denied authority to provide telecommunications services nor has its authority been revoked in any jurisdiction. Moreover, Airbus states that to date, there are no civil or criminal proceedings pending against the Petitioner in any jurisdiction including settlements of any such proceeding regardless of whether liability is or not admitted. However, in the last ten (10) years there have been six (6) civil actions filed against the Petitioner ranging in nature from two (2) patent infringements, two (2) wrongful deaths, one (1) employment related claim and one (1) alleged breach of a non-disclosure and non-competition agreement. In response to staff's inquiry, Petitioner has submitted an affidavit from its General Counsel and Chief Compliance Officer stating that the above stated six Civil Actions have each been satisfactorily concluded in accordance with the terms of their respective confidential settlement agreements resolving the same and the related terms have been met by each of the six Plaintiffs and Defendant, Airbus. Hence, all of the aforementioned actions filed were settled and dismissed with prejudice. Additionally, Airbus' Chief Compliance Officer also stated under penalty of perjury that the information submitted is true-and-correct to the best of his/her knowledge, information and belief.

Petitioner seeks authority to provide an emergency (E-9-1-1) routing and location identification service, an important component of the 9-1-1 system in the State of New Jersey. The proposed E-9-1-1 service permits landline, mobile, and Voice over Internet Protocol ("VoIP") service providers to transmit call routing and caller location information to Public Safety Answering Points ("PSAPs") in a quick, reliable, and efficient manner and, assert that it is a critical link in ensuring that customers use current and future landline, mobile and Internet Protocol-based services to obtain reliable E-9-1-1 services. Petitioner further asserts that its solutions are offered on a competitive basis and its entry into the market helps promote technological innovation by other carriers while also streamlining prices for E-9-1-1- routing services. Petitioner's plans for the next five years is not only to continue to be the provider of E-9-1-1 call handling solutions sold through distribution channels but also, to expand into providing additional E-9-1-1 emergency services direct to government and quasi-government PSAPs. Petitioner may also provide other local exchange and interexchange telecommunications services including, but not limited to, business resold and facilities-based local, interexchange, bundled interexchange and wholesale or carrier-to-carrier Next Generation 911 services, including bundled data, voice and/or wireless services in support of Next Generation 911 service. Petitioner will utilize the facilities of ILEC and other facilities-based carriers. As such, it will not be constructing or extending any facilities. Petitioner states that it does not have any future plans to provide residential telecommunications services to end users in the State of New Jersey. However, if Airbus undertakes plans in the future to provide residential telecommunications services to end users, Petitioner will inform the Board of its intent and post its tariff online. Petitioner will post initial tariff online and provide related link to the Board's staff within reasonable amount of time upon approval of its petition. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.S.A. 48:3-7.8 which requires that books and records be kept within the State of New Jersey. Instead, Petitioner requests permission to keep all books, records, documents and other writings incidental to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices located in Temecula, California in accordance with N.J.A.C. 14:1-5.15(a)(2).

By letter dated June 22, 2016, 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 object to a grant of the waiver requested in connection with record-keeping by Petitioner, nor does Rate Counsel oppose Petitioner's request is to treat its financial information as confidential and place under seal. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner's request to provide telecommunications services throughout the State of New Jersey.

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 Airbus' 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 and interexchange telecommunications services in the State of New Jersey subject to certain conditions. In the public interest and consistent with N.J.S.A. 48:2-23, the Board requires Petitioner to submit to the Board all E-9-1-1 complaints filed against the company and any resolution thereto for a period of three (3) years. 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 within five (5) days of the issuance of a Board Order and provide notice of its link to the online tariff posting.
- 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.
- 4) Petitioner shall file with the Board's staff E-9-1-1 complaints filed against the company and the resolution thereof for a period of three (3) years.

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.

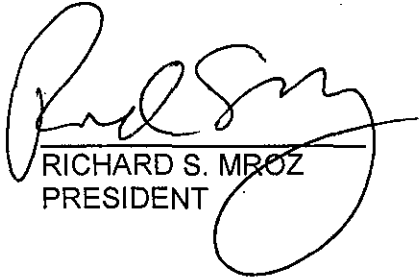
Regarding the Petitioner's request for waiver of the Board rules, the Board **HEREBY FINDS** that the Petitioner demonstrated good cause why the Board should grant relief from its requirements that the Petitioner keep its books and records within New Jersey. Therefore, subject to the Petitioner's continuing 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 keeping its books and records in New Jersey.

This Order shall be effective December 22, 2016.

DATED:

12/12/16

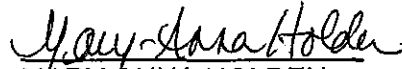
BOARD OF PUBLIC UTILITIES
BY:



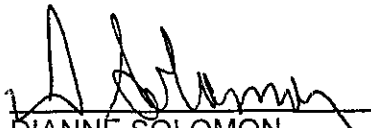
RICHARD S. MROZ
PRESIDENT



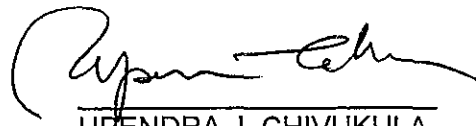
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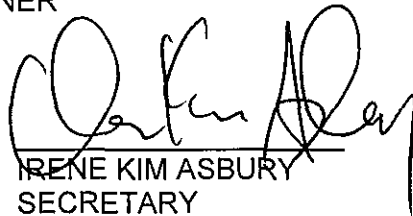


DIANNE SOLOMON
COMMISSIONER



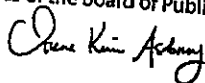
UPENDRA J. CHIVUKULA
COMMISSIONER

ATTEST:



RENE 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 PETITION OF AIRBUS DS COMMUNICATIONS, INC. FOR
AUTHORITY TO PROVIDE COMPETITIVE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE16050477

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