



Agenda Date: 11/21/17  
Agenda Item: 1B

**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
44 South Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
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 NEW )  
JERSEY MSA LLC FOR AUTHORITY TO PROVIDE )  
COMPETITIVE LOCAL EXCHANGE )  
TELECOMMUNICATIONS SERVICES IN THE STATE )  
OF NEW JERSEY )

ORDER

DOCKET NO. TE16121183

**Parties of Record:**

**Thomas H. Rowland, Esq.**, Rowland & Moore 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 Telecommunications Act of 1996, 47 U.S.C. § 151 et seq., and by letter dated December 20, 2016, New Jersey MSA LLC ("Petitioner" or "New Jersey MSA") filed a verified petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide both facilities-based and resold competitive local exchange telecommunications services to commercial business customers in the State of New Jersey. Petitioner has submitted its financial information under seal and has filed an affidavit in support of a motion to appear *pro hac vice* from its attorney, 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.

**BACKGROUND**

New Jersey MSA is a privately held limited liability company organized under the laws of the State of Delaware and is a wholly owned subsidiary of Scientel Solutions, LLC ("Scientel"). New Jersey MSA's affiliated company, SW Networks, LLC, is owned and/or controlled by Scientel. Petitioner's principal offices are located at 948 Springer Drive, Lombard, Illinois 60148. New Jersey MSA plans to establish a local office and customer support center at 600 Meadowlands Parkway, Suite 22-C, Secaucus, New Jersey 07094, the current local business offices of Scientel.

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 Corporation. According to the Petition, neither Petitioner nor its affiliate is currently operating in any other State. However, certifications for regulated telecommunications services have been granted to companies affiliated with the Petitioner in Illinois, Indiana, Minnesota, Montana, Ohio and Texas. 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 including settlements. Upon approval of its petition, Petitioner intends to identify customers for its initial suite of services, prioritize the need to negotiate an interconnection agreement with incumbent local exchange carriers ("ILECs") and procure leased capacity to meet customer demand.

Petitioner seeks authority to provide both facilities-based and resold competitive local exchange telecommunications services to commercial business customers in the State of New Jersey. Petitioner does not currently have customers, but intends to provide retail and wholesale wireline service offerings. Petitioner states that currently there are no facilities under construction in New Jersey. Petitioner stated that it will file its tariff with the Board and provide notice of its website link to the online tariff posting 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. For administrative efficiencies, Petitioner requests permission to keep all financial books, records, documents and other writings incident to the conduct of Petitioner's New Jersey's business at Petitioner's corporate offices located in Lombard, Illinois in accordance with N.J.A.C. 14:1-5.15(a)(2). Petitioner pledges to keep its books in accordance with generally accepted accounting principles and acknowledges its continuing responsibility to provide its books and records upon 48 hours notice, in the manner requested, incurring all expenses or charges for any investigation or examination of these books and records.

By letter dated January 26, 2017, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments to the Board stating that the petition meets the regulatory requirements and is consistent with the public interest, convenience, and necessity. Rate Counsel did not object to the request in connection with record-keeping by Petitioner, nor did Rate Counsel oppose Petitioner's request to treat its financial information as confidential and placed under seal. As Rate Counsel supports competition to lower prices, technological development, and deployment providing consumers with greater alternatives, Rate Counsel did not oppose a grant of authority or approval of Petitioner's request to provide competitive local exchange and interexchange telecommunications services throughout the State of New Jersey.

## **DISCUSSION**

On February 8, 1996, the 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, promoting competition and removing barriers to entry in telecommunications markets 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). The Board, as the State regulatory authority, may impose requirements necessary to protect the public safety and welfare, ensure the continued quality of

telecommunications services, and safeguard the rights of consumers on a competitively neutral basis and consistent with universal service. 47 U.S.C. § 253(b).

In considering this petition for competitive local exchange carrier ("CLEC") authority to provide telecommunications services, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets by qualified applicants. 47 U.S.C. § 253(a). The Board additionally notes the State policy to "[p]rovide diversity in the supply of telecommunications services" and Legislative 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" pursuant to the New Jersey Telecommunications Act of 1992, N.J.S.A. 48:2-21.16(a)(4); and N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed New Jersey MSA's petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide facilities-based landline CLEC services only, is in compliance with the Board's filing requirements to provide facilities-based competitive local exchange telecommunications landline services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide competitive local exchange telecommunications services in the State of New Jersey. These findings and authorization do not pertain to non-CLEC services. Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner must make the terms and conditions of said service publicly available on its website and must provide a printed copy of those terms and conditions to a customer upon request.

The granting of such authority conveys certain rights and privileges upon the Petitioner, in its designation as a CLEC in New Jersey, which are reserved for the provision of facilities-based landline services. While CLECs may also provide other telecommunications services, including but not limited to wireless, small cell or distributed antenna system, these service offerings are beyond the scope of Board jurisdiction and the granting of CLEC authority in this Order and generally. Specifically, the Board's granting of CLEC authority is limited to the provision of competitive facilities-based local and interexchange service offerings. To the extent that a CLEC provides non-regulated telecommunications services, the CLEC benefits, rights or privileges are not applicable to those non-regulated services.

The Board **HEREBY ORDERS:**

- (1) Petitioner shall provide notice to the Board of its website link which contains the terms and conditions of its competitive local exchange telecommunications services within five (5) days from the effective date of a Board Order. To ensure service quality, Petitioner shall notify the Board within 10 days from the date it begins service to New Jersey customers;
- (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. If Petitioner does not receive the Board's annual report package from the Division of Audits on or before February 1 of

each year, it is Petitioner's responsibility to obtain them from the Board. It is also Petitioner's responsibility to ensure timely filing of these reports;

- (4) Failure to comply with this order may result in monetary penalties pursuant to N.J.S.A. 48:2-42, suspension of CLEC authority, and/or revocation of CLEC authority; and
- (5) 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.

Further, upon review of the above referenced *pro hac vice* motion and supporting certifications in this matter, and with no objections to it having been received after due notice to the parties, the motion is **GRANTED**. Accordingly, Mr. Rowland has satisfied the conditions for admission, and therefore, the Board **ORDERS** that the motion seeking his admission to practice before the Board *pro hac vice* in the above-captioned matter be granted, provided that he shall:


- (1) abide by the Board's rules and all applicable New Jersey Rules of Court, including all disciplinary rules;
- (2) pay to the New Jersey Lawyers Fund for Client Protection the fees and annual assessment required by R. 1:20-1(b), 1:28-2, and 1:28B-1(e) and submit proof of same to the Board;
- (3) consent to the appointment of the Clerk of the Supreme Court as agent upon whom service of process may be made for all actions against him that may arise out of his participation in this matter;
- (4) notify the Board immediately of any matter affecting his good standing with the bar of his admitted jurisdiction; and
- (5) submit all pleadings, briefs and other papers to be filed with the Board as signed by an attorney of record authorized to practice in this State, who shall be responsible for the filings and for the conduct of this case as the admitted attorney of record therein.

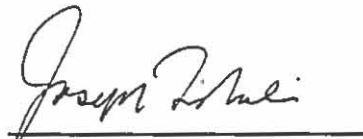
Petitioner additionally requests a waiver of N.J.S.A. 48:3-7.8. Petition seeks authority to keep its books and records outside the State of New Jersey. The request was noticed and unopposed. Upon review, the Board **FINDS** that the Petitioner demonstrated good cause why relief should be granted. Subject to the Petitioner's continuing responsibility to produce such records at such time and place within this State as the Board may designate, in the manner requested, and to pay all expenses or charges incurred for any investigation or examination of the books and records, the Board **GRANTS** its permission to keep records, books, accounts, documents and other writings outside the State of in New Jersey pursuant to N.J.A.C. 14:1-5.15, and to that extent, waives the Uniform System of Accounts requirement at N.J.A.C. 14:1-4.3.

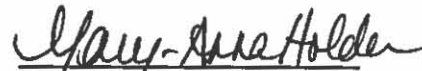
This Order shall be effective on December 1, 2017.

DATED: 11/21/17

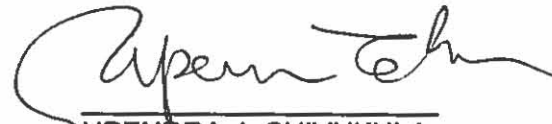
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BY:

  
RICHARD S. MROZ  
PRESIDENT

  
JOSEPH L. FIORDALISO  
COMMISSIONER

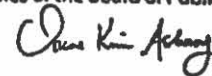
  
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ATTEST:   
IRENE KIM ASBURY  
SECRETARY

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 PETITION OF NEW JERSEY MSA LLC FOR AUTHORITY  
TO PROVIDE COMPETITIVE LOCAL EXCHANGE TELECOMMUNICATIONS  
SERVICES IN THE STATE OF NEW JERSEY**

**DOCKET NO. TE16121183**

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