



Agenda Date: 6/10/20
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)
DRW NX DEPLOYMENT LLC FOR APPROVAL TO)
PROVIDE LOCAL EXCHANGE AND)
INTEREXCHANGE TELECOMMUNICATIONS)
SERVICES IN THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE20040323

Parties of Record:

Richard J. Lemanowicz, Esq., Lemanowicz, LLP
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 April 29, 2020, DRW NX DEPLOYMENT LLC (“Petitioner” or “DRW”) filed a verified petition with the New Jersey Board of Public Utilities (“Board”) for authority to provide local exchange and interexchange telecommunications services throughout the State of New Jersey. Petitioner has submitted its Financial Statements and Competitive Exchange Carrier Questionnaire 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.

BACKGROUND

DRW is a privately held Limited Liability Company organized under the laws of the State of Delaware. DRW was initially formed as Vigilant Deployment LLC in the State of Delaware on June 10, 2014. Vigilant Deployment LLC filed a Certificate of Amendment to Certificate of Formation changing its legal name to DRW which became effective February 11, 2019. Petitioner’s principal offices are located at 540 West Madison Street, Suite 2500, Chicago, Illinois 60661.

Petitioner has submitted copies of its Certificate of Amendment to Certification of Formation, Certificate of Good Standing from the State of Delaware and its New Jersey Certificate of Authority to Conduct Business in New Jersey as a Foreign Limited Liability Company. Petitioner has not applied for and is not currently authorized to provide telecommunications services and, has no

current plans to operate as a competitive local exchange carrier in any other jurisdiction. Petitioner has not been denied any requests for authority to provide telecommunications services in any other jurisdiction. And, there are not now, and have not been in the past, any civil or criminal proceedings against DRW in any jurisdiction.

Petitioner states that it does not require interconnection to the network of the Incumbent Local Exchange Carriers ("ILEC"). If the Petitioner does require interconnection to the network of the ILEC, DRW will seek the necessary Board approval for an Interconnection Agreement ("IA") with ILEC.

Petitioner seeks authority to provide local exchange and interexchange telecommunications services to enterprise customers throughout the State of New Jersey. Petitioner will provide enhanced range of telecommunications services, encourage competition among telecommunications service providers, and provide more reliable telecommunications services. Petitioner intends to operate private communications network by incorporating elements of local exchange and interexchange telecommunications services ("Services") into their existing networks which will enhance connectivity between business operations and data centers throughout the State of New Jersey. Petitioner's Services will be provided through owned and leased network elements which includes, but may not be limited to, dark, dim and lit fiber-optic cable. Petitioner will offer its Services through written agreements on an individual case basis. Petitioner's initial focus for their Services will be on the metropolitan areas in the northeast region of the State and depending on demand for its' Services, Petitioner may consider expansion of their Services to additional areas within the State of New Jersey. Petitioner's Services will not include end user voice application and will not furnish traditional residential or business local telephone services. However, should market conditions warrants and Petitioner begins providing retail or switched access voice services to end user residential and/or business customers, DRW will file the necessary tariff and enter into an IA with ILEC before offering such services. Petitioner will file Terms and Conditions of providing its Services upon approval of its petition and 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 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. For administrative efficiencies, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP") and to keep all financial 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 Chicago, Illinois.

By letter dated May 13, 2020, the New Jersey Division of Rate Counsel ("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. Rate Counsel does not object to granting the waiver requests in connection with record-keeping by Petitioner, nor does Rate Counsel oppose Petitioner's request to treat its financial statement and competitive exchange carrier questionnaire as confidential and placed under seal. Accordingly, Rate Counsel has no objection should the Board determine after its review that approval of Petitioner's request in this matter is prudent and warranted.

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 CLEC authority to provide telecommunication 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 the 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 DRW’ s petition and the information supplied, the Board **FINDS** that Petitioner with respect to their request to provide local exchange and interexchange telecommunications services, is in compliance with the Board’s filing requirements to provide landline facilities-based competitive local exchange telecommunications landline services in New Jersey. Accordingly, the Board **HEREBY AUTHORIZES** Petitioner to provide local exchange and interexchange 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, such as wireless, small cell or distributed antenna systems, these service offerings are beyond the scope of Board jurisdiction and the granting of CLEC authority in this Order and generally. Specifically, the Board granting of CLEC authority is limited to the provision of competitive facilities-based local and interexchange services. 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.

Regarding DRW’ s request that its information be treated confidentially, the Board makes no finding and directs that the information be considered in accordance with the Board’s rules at N.J.A.C. 14:1-12 et seq.

The Board **HEREBY ORDERS:**


- 1) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner must post the terms and conditions of its retail competitive services on its website in a publically-available location, and must also provide a printed copy of those terms and conditions to a customer upon request of the customer.
- 2) Petitioner shall provide notice to the Board of its website link described above that contains the terms and conditions of its competitive local exchange and interexchange telecommunications services to end-use subscribers before commencing/offering retail local exchange services to end-use subscribers. To ensure service quality, Petitioner shall notify the Board within ten (10) days from the date it begins providing such services to New Jersey customers;
- 3) Petitioner shall provide notice to the Board of its website link which contains the terms and conditions of 9-1-1 and E-9-1-1 service when Petitioner begins offering retail local exchange services to end-use subscribers to ensure that Petitioner's owned/leased facilities are equipped to provide reliable and functional access to 9-1-1 and E-9-1-1 services to end-use subscribers. To ensure service quality, Petitioner shall notify the Board within ten (10) days from the date it begins providing such services to New Jersey customers;
- 4) Pursuant to N.J.S.A. 48:2-16(2)(b) and N.J.A.C. 14:3-6.3 and, N.J.S.A. 48:2-62, Petitioner shall file an annual report and a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before March 31 and June 1 of the following year, respectively. 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. 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;
- 5) 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
- 6) 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.

Petitioner additionally requests a waiver of N.J.S.A. 48:3-7.8 and N.J.A.C. 14:1-4.3. Petitioner seeks authority to keep its books and records outside the State of New Jersey and in accordance with GAAP. 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 these books and records, the Board **GRANTS** its permission to keep records, books, accounts, documents and other writings outside the State of New Jersey pursuant to N.J.A.C. 14:1-15 and waives the USOA requirement at N.J.A.C. 14:1-4.3.

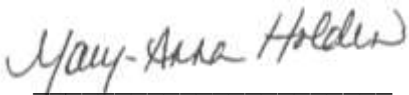
This Order shall be effective June 20, 2020.

DATED: June 10, 2020

BOARD OF PUBLIC UTILITIES
BY:




JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER




UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF VERIFIED PETITION OF DRW NX DEPLOYMENT LLC FOR
APPROVAL TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES IN THE STATE OF NEW JERSEY**

DOCKET NO. TE20040323

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