



Agenda Date: 8/17/22
Agenda Item: IB

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF)
EARTHGRID PBC CORPORATION FOR AUTHORITY) ORDER
TO PROVIDE FACILITIES-BASED AND RESOLD)
LOCAL AND INTEREXCHANGE SERVICES,)
THROUGHOUT THE STATE OF NEW JERSEY) DOCKET NO. TE22060385

Parties of Record:

Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel
Laura M. Miller, Esq., Norris McLaughlin, P. A., Attorney for Petitioner

BY THE BOARD:¹

On June 14, 2022, EarthGrid PBC Corporation (“Petitioner” or “EarthGrid”) filed a verified petition (“Petition”) with the New Jersey Board of Public Utilities (“Board”), pursuant to the New Jersey Telecommunications Act of 1992 (“1992 Act”), N.J.S.A. 48:2-21.16 *et seq.*, the Federal Telecommunications Act of 1996 (“Federal Act”), Pub. L. No. 104-104, 110 Stat. 56 (February 8, 1999) and the Board’s rules, N.J.A.C. 14:1 *et seq.*, seeking authority to operate as a competitive local exchange carrier (“CLEC”) and operate as an Interexchange Carrier (“IXC”) to provide all forms of facilities-based and resold local and interexchange services throughout the State of New Jersey. EarthGrid seeks statewide authority so that it may expand its service areas as market conditions warrant and as additional service areas become open to competition.

BACKGROUND

EarthGrid is a privately held corporation organized under the laws of the State of Delaware. Petitioner’s principal offices are located at 1 West Barrett Avenue, Suite 5, Richmond, California 94801.

EarthGrid was initially formed as Red Gopher Cooperative Corporation on September 23, 2016. It then filed an Amended and Restated Certificate of Incorporation changing its legal name to Red Gopher Cooperative PBC, a Public Benefit Corporation on March 22, 2018. Later, Red Gopher Cooperative PBC filed a Certificate of Amendment and changed its legal name to EarthGrid on June 29, 2020. Petitioner has submitted copies of its Amended and Restated Certificate of

¹ Commissioner Zenon Christodoulou abstained from voting on this matter.

Incorporation and Certificate of Good Standing from the State of Delaware and its New Jersey Certificate of Authority to Transact Business in New Jersey as a Foreign For-Profit Corporation.

Petitioner is authorized to provide intrastate telecommunications service in California, Florida, Idaho, Iowa, Louisiana, Massachusetts, Nebraska, Nevada, New York, Oregon and Utah. Petitioner stated that there are not now, nor have there ever been, civil or criminal proceedings against EarthGrid in any jurisdiction, including settlements of any proceeding. Further, the Petitioner stated that it has never filed for bankruptcy nor has it been the subject of any state or federal investigation. Petitioner has not yet executed an interconnection agreement for New Jersey operations. Petitioner intends to commence negotiations with Verizon New Jersey upon approval of the Petition.

In the Petition, EarthGrid seeks authority to provide point-to-point intra-exchange and inter-exchange telecommunication services throughout New Jersey. According to EarthGrid, Petitioner intends to provide non-switched point-to-point telecommunications service to enterprise customers, Wireless Service Providers (“WSPs”), tribal communities, other telecommunications carriers and communication providers and municipalities on a wholesale basis. Petitioner further plans to provide service via its own lit and dark fiber facilities and/or through resale arrangements developed on a case-by-case basis. Petitioner plans to offer customers rates in writing and on a non-discriminatory basis. Petitioner does not intend to furnish switched voice services or dial tone and has no immediate plans to provide services to residential customers or to business customers other than WSPs, data centers, or other utilities and/or Independent Power Producers and telecommunications carriers.

The Petitioner’s plans for the next year and five (5) years consist of initially providing point-to-point telecommunication services that it will offer to enterprise customers, tribal communities, municipalities, or other carriers on a wholesale basis. Petitioner contended these services will enhance competition by providing high quality and high capacity alternatives. Petitioner envisions that its service will more efficiently use rights-of-way and offer access to difficult to serve locations. Petitioner maintains a toll-free number for customer service inquiries, which is available 24 hours a day, 7 days a week, and plans to post its general terms and conditions on its website at www.earthgrid.io upon securing Board approval of its request in the Petition.

Petitioner also requested a waiver of the rules requiring it to keep its books and records within the State of New Jersey and maintain financial records in accordance with the Uniform System of Accounts (“USOA”). Such requirements arise from N.J.S.A. 48:3-7.8(a), N.J.A.C. 14:1-4.3, and N.J.A.C. 14:10-1A.13. The Board also possesses the authority to waive these requirements pursuant to N.J.S.A. 48:3-7.8(b) and N.J.A.C. 14:1-1.2(b). 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 Richmond, California.

By letter dated June 30, 2022, 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 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. Accordingly, Rate Counsel does not oppose a grant of authority or approval of Petitioner’s request to provide competitive facilities-based and resold local and interexchange telecommunications services throughout the State of New Jersey.

DISCUSSION AND FINDINGS

On February 8, 1996, the Federal Act was signed into law in order to promote competition and remove barriers to entry in telecommunications markets. To that end, it provides 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). However, 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 that is consistent with universal service. 47 U.S.C. § 253(b).

In considering the Petition for CLEC authority to provide telecommunication services, the Board recognizes its obligation to not prohibit entry into intrastate telecommunications markets by qualified applicants. 47 U.S.C. § 253(a). The Board additionally notes, pursuant to the 1992 Act, that State policy is 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.” N.J.S.A. 48:2-21.16(a)(4), (b)(1) and (b)(3).

Therefore, having reviewed EarthGrid’ s Petition and the information supplied, the Board **FINDS** that with respect to its request for approval to provide facilities-based and resold local and interexchange services, the Petitioner 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 facilities-based and resold local and interexchange services throughout 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 shall make the terms and conditions of said service publicly available on its website and shall 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.

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 shall post the terms and conditions of its retail competitive services on its website in a publicly-available location, and shall also provide a printed copy of those terms and conditions to a customer upon the customer’s request.
- 2) Petitioner shall provide the Board and Rate Counsel with a link to the page of the website described above that contains the terms and conditions of its competitive local exchange

and interexchange telecommunications services no later than five (5) days after the effective date of this Order. To ensure service quality, Petitioner shall notify the Board within 10 days from the date it begins providing such services to New Jersey customers;

- 3) Petitioner shall provide the Board with a link to the page of its website that contains the terms and conditions of 9-1-1 and E-9-1-1 services 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 subscribers. To ensure service quality, Petitioner shall notify the Board within 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), 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, N.J.S.A. 48:2-60 and N.J.S.A. 52:27EE-52, Petitioner is subject to an annual assessment by both the Board and Rate Counsel, respectively.

Petitioner additionally requested a waiver of N.J.S.A. 48:3-7.8(a), N.J.A.C. 14:1-4.3, and N.J.A.C. 14:10-1A.13. 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 the Board should grant such relief pursuant to its authority under N.J.S.A. 48:3-7.8(b) and N.J.A.C. 14:1-1.2(b). 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** EarthGrid permission to keep its records, books, accounts, documents and other writings outside the State of New Jersey and waives the USOA requirements at N.J.A.C. 14:1-4.3 and N.J.A.C. 14:10-1A.13.

This Order shall be effective August 24, 2022.

DATED: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER

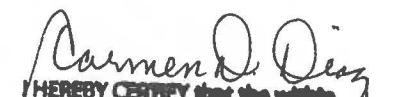


DIANNE SOLOMON
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST: 
CARMEN D. DIAZ
ACTING 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 VERIFIED PETITION OF EARTHGRID PBC CORPORATION FOR
AUTHORITY TO PROVIDE FACILITIES-BASED AND RESOLD LOCALAND
INTEREXCHANGE SERVICES THROUGHOUT
THE STATE OF NEW JERSEY

DOCKET NO. TE22060385

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