



Agenda Date: 12/16/20
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 PETITION OF ENGINE)
COMMUNICATIONS INFRASTRUCTURE, INC. FOR)
AN ORDER OF APPROVAL TO PROVIDE)
COMPETITIVE LOCAL EXCHANGE AND)
INTRASTATE INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE20090626

Parties of Record:

Andrew M. Klein, Esq., Klein Law Group PLLC
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Pursuant to New Jersey Administrative Code (“N.J.A.C.”) § 14:1-5.1 and the New Jersey Board of Public Utilities’ (“Board”) General Guidelines for Filings, and by letter dated September 29, 2020, Engine Communications Infrastructure, Inc. (“Petitioner” or “ECI”) filed a petition with the Board for an order of approval and authority to operate as a competitive local exchange carrier (“CLEC”) and to provide competitive facilities-based and non-facilities based local exchange and intrastate interexchange telecommunications services to commercial subscribers throughout the State of New Jersey. Petitioner has submitted its financial statements 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

ECI is a privately owned corporation organized under the laws of the State of Delaware. Petitioner is a wholly owned subsidiary of JoeMax Telecom LLC (“JoeMax”), founded in 2004. According to Petitioner, JoeMax is a leading provider of engineering and project management services for the telecommunications industry, and has over seventy (70) employees and decades of telecommunications related experience. Petitioner’s principal offices are located at 695 Route 46, Suite 301, Fairfield, New Jersey 07004.

Petitioner is an affiliate of 11:11 Systems, Inc. (“sister subsidiary”) which is authorized to provide competitive local exchange and intrastate interexchange telecommunications Services in New Jersey.¹ Petitioner intends to build its own fiber-based network upon receiving Board authority in contrast to its sister subsidiary which initially plans to provide service solely on a resale basis.

Petitioner has submitted copies of its Certificate of Incorporation and Good Standing from the State of Delaware and its New Jersey Certificate of Authority to Conduct Business in New Jersey as a Foreign Corporation. Petitioner does not currently hold, and has not previously applied for, operating authority in other states. Accordingly, in no instance has Petitioner’s operating authority been denied or revoked nor has Petitioner been the subject of civil or criminal proceedings in any jurisdiction.

Petitioner has not commenced negotiation to enter into an Interconnection Agreement (“IA”). However, Petitioner intends to enter into an IA with other providers, including Verizon and CenturyLink. Should Petitioner enter into a Section 251 IA with an Incumbent Local Exchange Carrier (“ILEC”), such agreement shall be filed with the Board for approval.

Petitioner seeks authority to provide facilities-based and non-facilities-based competitive local exchange, and intrastate inter Local Access Transport Area (“LATA”) and intra-LATA interexchange telecommunications services offered to commercial subscribers in conjunction with interstate services within the State of New Jersey. Petitioner intends to build and install a fiber-based network, which will be used to provide facilities-based fiber-ring and point-to-point dedicated (private-line) transport services and alternative broadband solutions only to commercial subscribers or other communications carriers. And, capacity on certain facilities built and owned by Petitioner may be leased or otherwise sold to Petitioner’s sister subsidiary for sale to end-users. Petitioner plans to have a fully operational fiber optic network system deployed between various colocation and enterprise facilities by the 4th quarter of calendar year 2020. Petitioner does not initially plan to provide any switched voice services or switched access services. In the event Petitioner later seeks to offer conventional basic local service, Petitioner will coordinate with ILECs for the provision of emergency 911 services, directory publication and distribution to local subscribers. Petitioner will provide any regulated telecommunications services in accordance with a publicly available service guide, as authorized pursuant to N.J.S.A. 48:2-21.19. Petitioner’s services will be available to subscribers 24 hours per day, 7 days per week, at rates, terms and conditions established pursuant to contract on an individual case basis. Petitioner’s service guide will be posted on its website at www.engineci.com upon approval of its petition. Petitioner maintains a toll-free number for customer service inquiries.

Petitioner requests a waiver of N.J.A.C. 14:1-4.3, which requires that books and records be maintained in accordance with the Uniform System of Accounts (“USOA”). For administrative efficiencies, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (“GAAP”).

By letter dated October 7, 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 maintaining its books and records in accordance with GAAP nor does Rate

¹IMO the Petition for an Order Authorizing 11:11 Systems, Inc. to Provide Competitive Local Exchange and Intrastate Interexchange Telecommunications Services throughout the State of New Jersey on 9/23/20 per docket no. TE20070481.

Counsel oppose Petitioner's request to treat its financial statement as confidential and placed under seal. Accordingly, Rate Counsel does not oppose the Board's grant of Petitioner's requests in this matter.

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, pursuant to the New Jersey Telecommunications Act of 1992, 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." N.J.S.A. 48:2-21.16(a)(4), (b)(1) and (b)(3).

Therefore, having reviewed ECI's petition and the information supplied, the Board **FINDS** that Petitioner, with respect to its request to provide competitive local exchange and intrastate 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 competitive local exchange and intrastate 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 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.

Regarding ECI's request that its financial statements 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:**

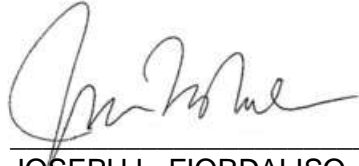
- 1) Pursuant to N.J.S.A. 48:2-21.19(a)(2) and N.J.A.C. 14:10-5.2, Petitioner shall post the terms and conditions of its retail competitive services on its website in a publicly-available location, and shall also provide a printed copy of those terms and conditions to a customer upon request of the customer.
- 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), 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 the Division of Rate Counsel, respectively.

Petitioner additionally requests a waiver of the requirements set forth in N.J.A.C. 14:1-4.3. Petitioner seeks authority to maintain its books and records 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 maintain Petitioner's records, books, accounts, documents and other writings in accordance with GAAP and waives the USOA requirement at N.J.A.C. 14:1-4.3.

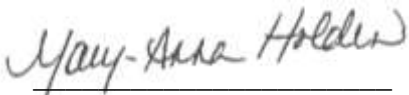
This Order shall be effective December 26, 2020.

DATED: December 16, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

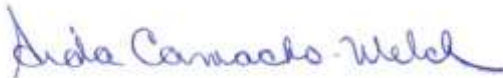


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

**IN THE MATTER OF THE PETITION OF ENGINE COMMUNICATIONS INFRASTRUCTURE,
INC. FOR AN ORDER OF APPROVAL TO PROVIDE COMPETITIVE LOCAL EXCHANGE
AND INTRASTATEINTEREXCHANGE TELECOMMUNICATIONS SERVICES
THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE20090626

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