



Agenda Date: 2/17/21
Agenda Item: IA

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)
EVERSTREAM SOLUTIONS LLC FOR APPROVAL TO)
PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES THROUGHOUT)
THE STATE OF NEW JERSEY)

ORDER
DOCKET NO. TE20100653

Parties of Record:

Christian Gartner, Chief Financial Officer, Everstream Solutions LLC
Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

Pursuant to the New Jersey Telecommunications Act of 1992, N.J.S.A. Title 48 and Section 253 of the Federal Telecommunications Act of 1996, and by letter dated September 28, 2020, Everstream Solutions, LLC ("Petitioner" or "Everstream") filed a petition ("Petition") with the New Jersey Board of Public Utilities ("Board"). The Petition seeks authority for Everstream to operate as a competitive local exchange carrier ("CLEC") and provide all forms of facilities-based competitive local exchange, interexchange and exchange access telecommunications services to business and wireless customers 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

Everstream is a privately held Limited Liability Company organized under the laws of the State of Ohio and, is a wholly owned subsidiary of Midwest Fiber Acquisition, LLC a New York based Corporation. Petitioner initially filed Article of Organization in the State of Ohio and was formed as 1C Network Services, LLC on September 13, 2012. Petitioner filed Amended and Restated Article of Organization with the State of Ohio changing its legal name to Everstream on February 5, 2014. Petitioner's principal offices are located at 1228 Euclid Avenue #250, Cleveland, Ohio 44115.

Petitioner has submitted a copy of its Amended and Restated Articles of Organization from the State of Ohio and its New Jersey Certificate of Authority to Transact Business in New Jersey as a Foreign Limited Liability Company. Petitioner has authority in the State of Kentucky, Missouri and Ohio, and through its subsidiaries, Everstream GLC Holding Company, LLC, Lynx Network Services, and Rocket Fiber, holds authority to provide telecommunications services in Illinois, Indiana, Michigan, and Wisconsin and is successfully offering telecommunications services in each of those jurisdictions. In addition, Everstream, is in the process of seeking authority to provide telecommunications service in Delaware, Maryland, New Jersey, New York and Pennsylvania.

Petitioner has never been denied or revoked authority to provide service in any other jurisdiction. Petitioner has never filed for bankruptcy nor has it been the subject of any state or federal investigation. And, there are not now, nor have there been, civil or criminal proceedings against the Petitioner in any jurisdiction, including settlements of any proceeding.

Concurrently with this Petition, per letter date November 4, 2020, a Verified Joint Petition was filed by PEG Bandwidth NJ, LLC¹, a Seller and wholly owned subsidiary of Uniti Group Inc. and Everstream, a Buyer for approval for Seller to transfer certain fiber optic assets to Buyer under Docket No. TM20110721. Seller and Everstream entered into an Assets Purchase Agreement on October 20, 2020 Pursuant to which, Buyer will acquire from Seller discrete customer contracts and the telecommunications equipment associated with such customer contracts in a number of state including New Jersey. Upon consummation of the transaction, Everstream will hold the customer contracts and the associated telecommunications equipment used to serve customers in New Jersey upon approval of its petition for authority. None of the customers are residential end users. Instead, all customers are either enterprise or other carriers. The Acquired Assets also include certain unregulated assets that Everstream will acquire from Seller.

Petitioner seeks authority to provide all forms of competitive facilities-based local exchange, interexchange and exchange access private line services to business and wireless customers throughout the State of New Jersey. Petitioner plans to provide this services through the purchase of unbundled network elements, over leased facilities, signing long-term indefeasible right of use to utilize network of Uniti Group, Inc. as well as using its own facilities. Currently Petitioner has no plans to offer local exchange services or long distance calling to residential customers. Hence, Petitioner has not negotiated an Interconnection Agreement ("IA") with incumbent local exchange carrier ("ILEC"). However, in the event that an IA is required, Petitioner will enter into an IA with ILEC and submit the same for the Board approval. Petitioner is a super-regional network service provider bringing fiber-based Ethernet, internet and data center solutions to business throughout the Midwest. Petitioner has more than 10,000 route miles and comprehensive data center connectivity at 100 Giga-byte per second ("Gbps"). Its network allows businesses to operate a converged Internet Protocol ("IP") network capable of delivering robust voice and data services at speeds from 10 to 100 Mega-byte per second ("Mbps"). Petitioner services include point-to-point, point-to-multipoint and multipoint to multipoint dedicated high capacity transmission services that connect one or more customer designated locations and/or to the company. The service may utilize Ethernet interfaces, optical fiber and/or coaxial cable facilities and is designed, provisioned and priced, accordingly. Hence, the Petitioner's services are custom designed and priced on the individual business application. Petitioner's Plans to manage the network supporting

¹ The Board authorized PEG Bandwidth NJ, LLC to provide facilities-based and resold telephone service with authority to provide local exchange service in *I/M/O Petition of PEG Bandwidth NJ, LLC for Approval to Provide Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey*, Docket No. TE12040317 (Order of Approval August 15, 2012).

target wireless customers over next one to five years throughout the State of New Jersey where carriers' towers are located. Petitioner plans to post its general terms and conditions on its website at www.everstream.net following the approval of its petition. In its Price Guide ("PG"), the Petitioner will list its terms, conditions, rules, regulations and service descriptions. Petitioner will update its PG for any changes on ongoing basis. The Petitioner services is available 24 hours/day and 7 days/week. The Petitioner maintains 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 Cleveland, Ohio.

By letter dated January 11, 2021, 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 as confidential and placed under seal. Accordingly, Rate Counsel does not oppose the Board granting Petitioner's requests or the issuance of a certificate of authority allowing Everstream to provide services in New Jersey if the Board deems it appropriate after its review of Petitioner's application 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 Everstream's Petition and the information supplied, the Board **FINDS** that Petitioner, with respect to its 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 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 Everstream's request that its Financial Statement be treated confidentially, the Board makes no finding and directs that the Financial Statement 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 its Legacy 9-1-1, E-9-1-1 and NG9-1-1 service to ensure that Petitioner's owned/leased facilities are equipped to provide reliable and functional access to 9-1-1, E-9-1-1 and NG9-1-1 services to 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 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.

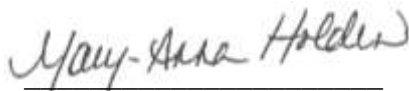
This Order shall be effective February 27, 2021.

DATED: February 17, 2021

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 EVERSTREAM SOLUTIONS, LLC FOR APPROVAL
TO PROVIDE LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS
SERVICES THROUGHOUT THE STATE OF NEW JERSEY**

DOCKET NO. TE20100653

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