



State of New Jersey
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 Director

Via Electronic and Regular Mail

November 17, 2014

Kristi Izzo, Secretary
 New Jersey Board of Public Utilities
 44 South Clinton Avenue, 9th Floor
 P.O. Box 350
 Trenton, New Jersey 08625-0350

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 REC'D
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 CASE MANAGEMENT

Re: I/M/O the Verified Petition of Network Billing Systems, L.L.C., for Approval to Participate in Additional Financing Arrangements of Fusion NBS Acquisition Corp. BPU Docket No. TF1411285

Dear Secretary Izzo:

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed the above referenced Verified Petition of Network Billing Systems, L.L.C., (“Petitioner” or “NBS”), for a grant of approval by the New Jersey Board of Public Utilities (“Board”) to participate in additional financing arrangements of its parent Fusion NBS Acquisition, Corp. (“FNAC”) in connection with FNAC’s acquisition of PingTone Communications, Inc. (the “PingTone Acquisition”).¹ Rate Counsel submits the within comments on this matter for the Board’s consideration. Petitioners have requested expedited treatment of the Petition, which Rate Counsel does not oppose. Enclosed with this original please find ten copies, kindly return a date/stamped “Received” and/or “Filed” copy to Rate Counsel. For the reasons that follow, Rate Counsel does not object to approval of Petitioner’s request in the Verified Petition.

Petitioner is a New Jersey limited liability company located in Wayne, New Jersey, and is a wholly owned subsidiary of FNAC, a Delaware corporation, which in turn is a direct wholly owned subsidiary of Fusion Telecommunications International, Inc., (collectively, the “Company”), a publicly-held Delaware corporation (NASDAQ:FSNN), headquartered in New York, New York. In New Jersey Petitioner provides local exchange and interexchange telecommunications services effective September 8, 2008 under BPU Docket TE08070466.² Petitioner states that on October 31, 2014, FNAC issued new notes in the aggregate amount of \$5

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¹/ Verified Petition, at pp. 1-2.

²/ *Id.*, at p. 2.

million for which NBS will serve as guaranty.³ The additional financing will fund the PingTone Acquisition. The additional financing and contemplated acquisition is intended to strengthen the company and enable Petitioner to continue to provide quality services to customers and strengthen competition for these services in New Jersey. Petitioner further notes that the Company does not expect a change in its existing management and employees in New Jersey as a result of the financing arrangements nor will it affect employee retirement benefit arrangements.⁴

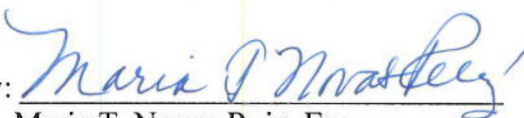
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Prior Board approval of any encumbrance or mortgage of a telecommunications service provider is required; otherwise, the transaction is void under New Jersey law.⁵ As the Petitioner's assets will secure the debt, in part, the Board's approval must be based on its satisfaction that the debt is made according to law and that the debt serves a beneficial purpose.⁶ Petitioner states that the financing arrangement will strengthen its ability to compete in the telecommunications market and will assist in bringing more competitive telecommunications services to consumers in the State of New Jersey. Petitioner has provided all the information required by *N.J.S.A. 48:3-9* and *N.J.A.C. 14:1-5.9* regarding a petition for approval of debt. Petitioners assert that the financing contemplated is not contrary to the public interest and will serve a beneficial purpose and will enable them to provide safe, adequate and proper service to subscribers in New Jersey under the same rates, terms and conditions of service as currently provided.⁷

Rate Counsel anticipates that the funds generated by the agreements will in fact enable Petitioner to continue providing innovative, high quality telecommunications services to the public and thereby promote increased competition in the New Jersey telecommunications market hopefully for the benefit of both residential and business customers in this state. Accordingly, Rate Counsel has no objection to the Board's grant of Petitioners' request under the Verified Petition. Thank you for your attention to this matter.

Very truly yours,

STEFANIE A. BRAND, DIRECTOR,
NEW JERSEY DIVISION OF RATE COUNSEL

By: 
Maria T. Novas-Ruiz, Esq.
Assistant Deputy Rate Counsel

MNR/gp
c: Service List

³/ Verified Petition at pp.3-5. Total amount guaranteed to date by Petitioner is \$47 million. *See*, Verified Petition at p.3-4.

⁴/ *Id.*, at p. 5.

⁵/ *N.J.S.A. 48:3-9, et seq.* If the Board finds that after investigation there is doubtful benefit to the petitioner, the Board may withhold approval. *See, Interstate Telephone & Telegraph Co. v. Board of Public Utility Commissioners*, 84 NJL 184 (Sup. Ct. 1913), wherein the court interpreted the 'approval of the purpose' provision to empower the Board with the authority to withhold approval if in its judgment the purpose of the debt incurred will have doubtful benefit to the applicant.

⁶/ *Id.* *See also*, the Verified Petition at Section IV, p. 5.

⁷/ Verified Petition at p. 5.

IMO Verified Petition of Network
Billing Systems for Approval to
Participate in Addl Financing
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