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State of New Jersey
DIVISION OF RATE COUNSEL
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Via Electronic and Regular Mail

October 8, 2015

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

TF15101145

Re: I/M/O the Verified Petition of Network Billing System, LLC for Approval to Participate in Additional Financing Arrangements of Fusion NBS Acquisition Corp. BPU Docket No. TF15 -Pending

Dear Secretary Asbury:

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed the above referenced Verified Petition of Network Billing System, LLC, ("NBS" or "Petitioner"), for approval by the New Jersey Board of Public Utilities ("Board") of two expanded and refinanced existing financial arrangements and has requested expedited treatment. Rate Counsel submits the within comments on this matter for the Board's consideration. Enclosed with this original please find ten copies, kindly return a date/stamped "Received" and/or "Filed" copy to Rate Counsel for our records. For the reasons that follow, Rate Counsel does not oppose expedited treatment of this matter or the Board's grant of Petitioners' requests in their Verified Petition.

NBS is limited liability company headquartered in Wayne, New Jersey and a wholly-owned subsidiary of FNAC a Delaware corporation and in turn a wholly-owned subsidiary of Fusion a publicly traded Delaware corporation (NASDAQ:FNSS) headquartered in New York, New York, which together with its subsidiaries provides digital voice and data communications. NBS provides resold and facilities-based local exchange and interexchange telecommunications services throughout New Jersey.¹ NBS seeks approval to serve as guarantor on a Credit Agreement inclusive of \$40 million, entered into by FNAC on August 28, 2015 and for future financial arrangements in the aggregate amount of up to \$100 million, which amount includes \$47 million previously authorized by the Board and guaranteed by Petitioners.² Petitioner seeks to take advantage of favorable debt market conditions and restructure existing credit facilities

¹/ Verified Petition at Section I.

²/ See Verified Petition at pp. 3-5 and *fn.* 5 for detail on loan and credit facility maturity dates. See also, Fusion Form 10-Q, 10-K and other SEC Filings at: <http://ir.fusionconnect.com/all-sec-filings>.

Handwritten notes: Case Mgmt, C. Antale (2), C. Vachon (2), J. Delprat (6)

and long-term debt at more favorable and fixed interest rates.³ Petitioners assert that the additional financing is intended to strengthen the parent company and enable Petitioners to continue to provide quality services to customers and strengthen competition for these services in New Jersey. Petitioners anticipate that funds generated will be used by Petitioner for a variety purposes, including expansion of Petitioners' networks and services that will allow New Jersey ratepayers to benefit from its expanded product line and competitive services.⁴

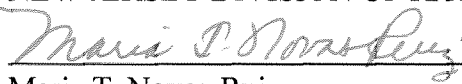
Prior Board approval of any encumbrance or mortgage of a telecommunications service provider is required; otherwise, the transaction is void under New Jersey law.⁵ As the Petitioner's assets will secure the debt, in part, the Board's approval must be based on its satisfaction that the debt is made according 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. Petitioner asserts that the various 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 does not oppose the Board's grant of Petitioner's requests 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



Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/rk
cc: Service List

^{3/} *Id.* Petitioner also notes that the Board has previously approved other of the Petitioners' requests to act as guarantor and expand its financial arrangements, under BPU Dockets TF14111285, TM14060541, TF14010102, TM12060511 and TE08070466, Petition at p. 2.

^{4/} Verified Petition at pp. 5-6.

^{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 pp. 5-6.

^{7/} *Id.*

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