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Via Electronic and Regular Mail

January 11, 2021

Aida Camacho-Welch, Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 3rd Fl., Ste. 314
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: I/M/O the Verified Joint Petition of PEG Bandwidth NJ, LLC and Everstream Solutions, LLC for Approval to Transfer Certain Assets to Purchasers
BPU Docket No.: TM20110721

Dear Board Secretary:

The New Jersey Division of Rate Counsel (“Rate Counsel”) has reviewed the above referenced Verified Joint Petition of PEG Bandwidth NJ, LLC (“PEG Bandwidth NJ” and/or “Seller”) and Everstream Solutions, LLC (“Everstream” and/or “Purchaser”), (collectively, “Petitioners”), filed with the New Jersey Board of Public Utilities (“Board”) seeking Board approval to transfer fiber optic assets inclusive of customers, customer contracts and telecommunications infrastructure.¹ Rate Counsel submits the within comments on this matter for the Board’s consideration. Rate Counsel is only filing comments electronically. Kindly acknowledge receipt of Rate Counsel’s electronic filing for our record. For the reasons that follow, Rate Counsel does not object to Board approval of Petitioners’ requests in this matter.

Petitioners and Transaction

PEG Bandwidth NJ is an Ohio limited liability company, authorized to provide local exchange and interexchange services pursuant to Board Order in Docket No. TE12040317 and is

¹ Petition, pp. 5-6. In addition, Rate Counsel notes that Everstream has filed a Petition seeking authority to provide exchange and interexchange services as a companion matter docketed by the Board under TE20100653.

an indirectly wholly owned subsidiary of UNITI Group Inc.² Uniti Group Inc., is a publicly traded real estate investment trust (NASDAQ: UNIT) that engages in the acquisition and construction of infrastructure utilized by the communications industry.³ Everstream is an Ohio limited liability company headquartered in Cleveland, OH and provides telecommunications services to business customers in Ohio and Missouri and has pending service applications in Delaware, Maryland, New Jersey, New York, Pennsylvania, and West Virginia and through its affiliates Everstream GLC Holding Company LLC, Lynx Network Group, Inc., and HRS Internet, LLC provides intrastate telecommunications services in Illinois, Indiana, Michigan, and Wisconsin.⁴ Petitioners note that Everstream is a super-regional network service provider bringing fiber-based Ethernet, internet and data center solutions to businesses with over 10,000 route miles and comprehensive data center connectivity at 100 Gbps allowing businesses to operate a converged IP network capable of delivering robust voice and data services at speeds from 10 Mbps to 100 Gbps.⁵

Petitioners note that the Acquired Assets are either other carriers or enterprises customers and will be advised (and in some cases consent will be requested) prior to the transfer of services from Seller to Everstream.⁶ Additionally, Petitioners assert “all customers will continue to receive their services over the same facilities as they do today, and will not suffer any adverse

² Petition, p. 2.

³ Id.

⁴ Petition, pp. 2-3. Additionally, the filing notes that “Everstream Solutions is a wholly owned subsidiary of Midwest Fiber Acquisition LLC (“Midwest”), a Delaware limited liability company. Midwest is owned by Midwest Fiber Holdings LP, and is ultimately indirectly owned by four limited partnerships organized in Luxembourg (AMP capital Global Infrastructure Fund II A LP, AMP Capital Global Infrastructure Fund II B LP, AMP Capital Global Infrastructure Fund II C LP, and AMP Capital Global Infrastructure Fund II E LP), collectively referred to as GIF II.” Id.

⁵ Petition, p. 3.

⁶ Id., p. 5.

consequences as a result of the transfer transaction.⁷ Petitioners also affirm that the Transaction as planned is in the public interest as it will allow Seller, PEG Bandwidth NJ, LLC, Uniti Group and Uniti to gain important operational efficiencies, and Purchaser, Everstream will obtain valuable assets in New Jersey allowing it to provide robust, facilities-based services on a competitive basis to New Jersey consumers.⁸

Board review and approval of the sale of the assets (customers/accounts) is based on the Board's satisfaction that the transaction meets the requisites under *N.J.S.A.* 48:3-7 and is in the public interest. Petitioners have provided information required under *N.J.S.A.* 48:3-7. Generally, sale transactions and transfer of mass market customer accounts, trigger customer notice requirements under the Board's mass migration regulations *N.J.A.C.* 14:10-12.5 and 14:10-12.6. Rate Counsel notes that Petitioners' filing indicates that none of the customers/accounts contemplated for transfer/sale under the Transaction are residential end-users.⁹ The sale assets are "carrier and enterprise customers, sophisticated consumers of high-capacity telecommunications services with contracts that dictate the assignment or transfer of services to other telecommunications service providers, receiving service under individually negotiated contracts," and are not considered mass market service end-user customers.¹⁰ Petitioners have asserted that customers will be advised of the Transaction in accordance with the terms of their individual contracts.¹¹ Rate Counsel defers to the Board's determination as to the applicability of its' mass migration rules to the customers affected under this Transaction. Notwithstanding,

⁷ Id.

⁸ Id., pp. 5-6.

⁹ Id., p. 5.

¹⁰ Id.

¹¹ Id.

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Rate Counsel recommends that a copy of the notice sent to affected customers be filed with the Board for the record in this matter.

Rate Counsel supports the contemplated continued provision of innovative, high quality telecommunications services to the public and the promotion of increased competition in the New Jersey telecommunications market. Continued competition will hopefully benefit both residential and business customers in this state. Accordingly, Rate Counsel would not oppose Board approval of the proposed sale/transfer of the customers/contracts based on the recommendation discussed herein. Thank you for your attention to this matter.

Very truly yours,

STEFANIE A. BRAND, ESQ.
DIRECTOR
DIVISION OF RATE COUNSEL

/s/ Maria T. Novas-Ruiz
Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/td
c: Service List

**I/M/O Verified Joint Petition of
PEG Bandwidth NJ, LLC, Seller
And Everstream Solutions LLC,
Purchaser, For Approval for Seller to
Transfer Certain Assets to Purchasers**

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