



State of New Jersey
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Governor

SHEILA OLIVER
Lt. Governor

BRIAN O. LIPMAN
Director

November 9, 2021

Via Electronic Mail Only

Ms. Aida Camacho-Welch,
Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Fl.
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: I/M/O the Verified Petition of Xtel Communications, Inc., for Approval to Incur Debt
BPU Docket No. TF21081081

Supplemental comments to Rate Counsel's October 27th filing

Dear Board Secretary:

The New Jersey Division of Rate Counsel ("Rate Counsel") has reviewed the above referenced Verified Petition of Xtel Communications, Inc., ("Xtel" or "Petitioner") filed with the New Jersey Board of Public Utilities ("Board") on August 24, 2021, and as amended and supplemented by Petitioner on November 8, 2021, requesting Board approval to incur new debt to fund expansion and growth of its services in New Jersey.¹ Rate Counsel requests acknowledgment of this electronic filing for its records.² Rate Counsel has no objection should the Board grant approval.

Discussion

Xtel, a New Jersey corporation, based in Mount Laurel, New Jersey provides facilities-based and resold telephone service throughout New Jersey under Board authorization granted in

¹ Petition, pp. 1-2.

² Pursuant to e-filing procedures approved by the Board under Docket No. Docket No. EO20030254, dated March 19, 2020.

BPU Docket TE99020058 and interstate telecommunications services under Federal Communications Commission authorization.³

Petitioners' initial filing on August 24, 2021, requested Board approval to incur new debt in the amount of \$7.5 million dollars at 4.5% interest maturing on December 1, 2027. On November 8, 2021, Petitioners amended their Verified Petition and provided additional financial information in support of a revised increased financing in the amount of \$8.7 million dollars at 5.75% interest maturing on December 1, 2027. Petitioners adopt and reaffirm the overall rationale for the new revised financing amount as discussed in their initial August 24th filing. Rate Counsel notes that Petitioners initial filing asserted the new debt will be secured through a pledge of Petitioner's assets and will be used to "pursue acquisitions and other investments, such as adding to Xtel's existing network infrastructure, working capital requirements (including the development and expansion of distributed network systems), and general corporate purposes of Petitioner."⁴ Likewise, Petitioner's initial filing states the debt is necessary and serves the public interest as it will support strategic growth initiatives, providing ongoing working capital, allowing for more effective competition by Petitioner in the communications industry.⁵ The initial filing affirms Petitioner's expectation to fully repay the Indebtedness in accordance with the terms of the financial arrangements, without any disruption of service or customer confusion or inconvenience.⁶ Petitioner reaffirms that the public interest, convenience and necessity

³ Petition p. 1, referencing I/M/O Petition of Xtel Communications, Inc. for Approval to Provide Interexchange and Local Exchange Services, Docket No. TE99020058 (Order of Approval, August 18, 1999).

⁴ Petition, p. 2.

⁵ Id., p. 3.

⁶ Id.

support a grant by the Board of the financial arrangements detailed in the Petition as amended by Petitioner's November 8th supplemental filing.⁷

Prior Board approval of any encumbrance or mortgage of a telecommunications service provider is required; otherwise, the transaction is void under New Jersey law.⁸ 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.⁹ See, *N.J.S.A.* 48:3-9 and *N.J.A.C.* 14:1-5.9. Petitioner asserts that the financing contemplated is not contrary to the public interest, and will customers.¹⁰ Petitioner has provided additional information in response to Board Staff's data requests in connection with the Board's financial review of the financial arrangements.¹¹

Rate Counsel relies on the assertions and information provided by Petitioner that the financial arrangements will promote quality service offerings and competition in the New Jersey telecommunications market ultimately for the benefit of both residential and business customers in this state. Accordingly, Rate Counsel has no objection should the Board determine after its financial review that approval is prudent, warranted and in the public interest.

⁷ Id.

⁸ *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 *N.J.L.* 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.

⁹ Petition, pp. 2-3.

¹⁰ On September 30, 2021, Petitioner provided responses to Board Staff's financial information requests in connection with the financing.

¹¹ Further supplemental financial information was filed with the Board by Petitioner on November 8, 2021.

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Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN,
DIRECTOR
NJ DIVISION OF RATE COUNSEL

/s/ Maria Novas-Ruiz

Maria T. Novas-Ruiz,
Assistant Deputy Rate Counsel

MNR/td
c: Service List