



State of New Jersey  
DIVISION OF RATE COUNSEL  
140 EAST FRONT STREET, 4<sup>TH</sup> FL  
P.O. Box 003  
TRENTON, NEW JERSEY 08625

PHIL MURPHY  
*Governor*

SHEILA OLIVER  
*Lt. Governor*

BRIAN O. LIPMAN  
*Director*

**Via Electronic Filing Only**

April 19, 2023

Hon. Sherri L. Golden, Board Secretary  
New Jersey Board of Public Utilities  
44 South Clinton Avenue, 9<sup>th</sup> Floor  
P.O. Box 350  
Trenton, New Jersey 08625-0350  
[Board.secretary@bpu.nj.gov](mailto:Board.secretary@bpu.nj.gov)

Re: I/M/O the Verified Joint Petition of PEG Bandwidth NJ, LLC and Uniti National LLC for Approval to Participate in Certain Financing Arrangements  
**BPU Docket No. TF23010054**

Dear Secretary Golden:

The New Jersey Division of Rate Counsel (“Rate Counsel”) submits these comments on the above-referenced Joint Petition filed by PEG Bandwidth NJ, LLC (“PEG NJ”) and Uniti National LLC (“Uniti National”) (together, the “Petitioners”) with the New Jersey Board of Public Utilities (“Board” or “BPU”) on January 27, 2023 requesting Board approval to participate in Financing Arrangements up to an aggregate principal amount of \$306.5 million, entered into by its corporate parent, Uniti Group Inc., and affiliates.<sup>1</sup> Rate Counsel requests acknowledgment of this electronic filing for its record.<sup>2</sup> Rate Counsel has no objection should the Board grant approval of the Financing Arrangements after its review.

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<sup>1</sup> Petition, p. 3.

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

Petitioners and Financing Arrangement

PEG NJ is authorized by the Board, under Docket TE12040317, to provide facilities-based and resold telephone service and local exchange service in New Jersey.<sup>3</sup> PEG NJ is also authorized to provide interstate telecommunications services by the Federal Communications Commission.<sup>4</sup> PEG NJ is a Delaware limited liability company with its principal offices located in Alabama.<sup>5</sup>

Uniti National is authorized by the Board, under Docket No. TE20100663, to provide competitive local exchange and interexchange telecommunications services in New Jersey.<sup>6</sup> Uniti National is a Delaware limited liability company with its principal offices located in Alabama.<sup>7</sup>

PEG NJ and Uniti National are indirect subsidiaries of Uniti Group Inc. (“Uniti Group”), a publicly traded Maryland real estate investment trust that engages in the acquisition and construction of communications infrastructure.<sup>8</sup> Uniti Group is not a telecommunications carrier, does not provide telecommunications services, and does not hold telecommunications licenses in any jurisdiction.<sup>9</sup>

Petitioners request Board approval to participate as guarantors in financing arrangements of their corporate parent, Uniti Group, and affiliates that will be used to repurchase a portion of outstanding debt and to pay related fees and expenses, to pay the cost of certain privately negotiated capped call transactions, and for general corporate purposes.<sup>10</sup> Specifically, Uniti Group completed an offering in the principal amount of \$306.5 million for 7.50% convertible

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<sup>3</sup> Petition, p. 1; see also 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, BPU Dkt No. TE12040317 (Aug. 15, 2012).

<sup>4</sup> Petition, p. 2.

<sup>5</sup> Id. at 1.

<sup>6</sup> Id. at 2; see also I/M/O Petition of Uniti National LLC for Approval to Provide Competitive Local Exchange and Interexchange Telecommunications Services throughout the State of New Jersey, BPU Dkt No. TE20100663 (Jan. 27, 2021).

<sup>7</sup> Petition, p. 1.

<sup>8</sup> Ibid.

<sup>9</sup> Petition, fn 1.

<sup>10</sup> Id. at 3.

senior notes due December 1, 2027.<sup>11</sup> These senior notes are to be guaranteed on a senior unsecured basis by each of Uniti Group’s subsidiaries, including Petitioners.<sup>12</sup> The proceeds of the offering were used by Uniti Group to repurchase outstanding debt in the form of 4.00% exchangeable senior notes due in 2024 in the aggregate principal amount of approximately \$213.4 million.<sup>13</sup> Uniti Group also used approximately \$21.1 million of the offering net proceeds to pay for privately negotiated capped call transactions with financial institutions.<sup>14</sup> The balance of the offering proceeds will be used for general corporate purposes, possibly including repurchase or repayment of other outstanding debt, such as additional open market repurchases, redemptions or tender offers of the existing exchangeable notes.<sup>15</sup>

Petitioners assert their participation as guarantors in the financing arrangement described above serves the public interest.<sup>16</sup> Specifically, Petitioners state authorization to participate as guarantors will “allow them to become more effective competitors in the communications industry,” not impede their ability to provide service, and will not cause customer inconvenience or confusion.<sup>17</sup>

Under New Jersey law, prior Board approval of any evidence of indebtedness of a telecommunications service provider is required.<sup>18</sup> As the Petitioners will be guarantors of Uniti Group’s offering, the Board’s approval must be based on its satisfaction that the debt is made according to law and pursuant to a Board-approved purpose. N.J.S.A. § 48:3-7 and N.J.S.A. § 48:3-9.

Rate Counsel relies on Petitioners’ assertions that the Financing Arrangements will promote increased competition in New Jersey’s telecommunications market, promote general

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

<sup>15</sup> Id. at 3-4.

<sup>16</sup> Id. at 4.

<sup>17</sup> Ibid.

<sup>18</sup> 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.

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corporate purposes, and not disrupt customer service. Accordingly, Rate Counsel has no objection should the Board determine, after its financial review of the additional information provided, that approval is prudent and warranted.

Thank you for your attention to this matter.

Very truly yours,

BRIAN O. LIPMAN, ESQ.,  
DIRECTOR  
NJ DIVISION OF RATE COUNSEL

*/s/ Robert Glover*

Robert Glover,  
Assistant Deputy Rate Counsel

RMG/td  
c: Service List