



State of New Jersey  
DIVISION OF RATE COUNSEL  
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**Via Electronic Filing Only**

June 8, 2023

Ms. Sherri 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

**Re: I/M/O the Verified Amended Joint Petition of PEG Bandwidth NJ, LLC  
and Uniti National LLC for Approval to Participate in Certain Financing  
Arrangements  
BPU Docket No. TF23030156**

Dear Ms. Golden:

The New Jersey Division of Rate Counsel (“Rate Counsel”) submits comments in the above referenced Joint Petition (“Joint Petition” and/or “Filing”) filed by PEG Bandwidth NJ, LLC (“PEG NJ”) and Uniti National LLC (“Uniti National”), jointly (“Petitioners”) with the New Jersey Board of Public Utilities (“Board”) on April 12, 2023, requesting Board approval to participate in certain new Financing Arrangements and the 2023 Modified Revolving Credit Facilities.<sup>1</sup> Rate Counsel requests acknowledgment of this electronic filing for its records.<sup>2</sup> For the reasons discussed below, Rate Counsel does not oppose Board approval of Petitioners’ new financial arrangements.

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<sup>1</sup> Amended Verified Petition at p. 1.

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

## **Petitioners**

Petitioners, PEG NJ and Uniti National, are both Delaware limited liability companies and indirect subsidiaries of Uniti Group Inc., a publicly traded Maryland real estate investment trust.<sup>3</sup> In New Jersey, PEG NJ is authorized to provide facilities-based and resold telephone service with authority to provide local exchange service while Uniti National is authorized to provide competitive local exchange and interexchange telecommunications services.<sup>4</sup> Additionally, PEG NJ is authorized by the FCC to provide interstate telecommunications services.<sup>5</sup>

## **Financing Arrangements**

Petitioners seek Board approval to participate as guarantors or co-guarantors and to pledge their assets as security for certain new financing arrangements of their corporate parent and affiliates.<sup>6</sup> Uniti Group's subsidiaries Uniti Group LP, Uniti Fiber Holdings Inc., Uniti Group Finance 2019 Inc, and CSL Capital, LLC (together, the "Issuers") have completed an offering of \$2.6 billion aggregate principal amount of 10.50% senior secured notes due 2028 (the "Financing Arrangements").<sup>7</sup> The Issuers used the net proceeds to fund the redemption in full of the existing 7.875% senior secured notes due 2025.<sup>8</sup> The Financing Arrangements will be guaranteed on a senior unsecured basis by Uniti Group, and on a senior secured basis by each of Uniti Group LP's subsidiaries, including Petitioners, that is an issuer, obligor or guarantor under Uniti Group's senior secured credit facilities and existing secured notes.<sup>9</sup> As such, Petitioners request Board authorization to participate as guarantors or co-guarantors and to pledge their

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<sup>3</sup> Amended Verified Petition at p. 1.

<sup>4</sup> Id. at p. 1-2.

<sup>5</sup> Id. at p. 2.

<sup>6</sup> Id. at p. 3.

<sup>7</sup> Id.

<sup>8</sup> Id. at 3 and 4.

<sup>9</sup> Id. at p. 3.

assets as security for the Financing Arrangements. Petitioners additionally request Board approval to modify previously Board-approved financing arrangements, called the 2020 Modified Revolving Credit Facilities (now, the 2023 Modified Revolving Credit Facilities) by lengthening the maturity of the revolving credit facility.<sup>10</sup>

Petitioners state that the proposed financing arrangements are in the public interest because they will “benefit the financial condition of Uniti Group Inc. and its current and future subsidiaries, including PEG NJ and Uniti National” thereby allowing them to “become more effective competitors in the communications industry.”<sup>11</sup> Petitioners further allege that the proposed financing arrangements will not hinder their ability to provide services or cause customer confusion or inconvenience.<sup>12</sup> Additionally, Petitioners state that allowing them to obtain more beneficial terms and to participate in the 2023 Modified Revolving Credit Facilities will serve the public interest by ensuring that Petitioners can “continue to use such credit lines, in part, to repay existing debt, and otherwise to fund some, or all, of the purchase price of future acquisitions, to support strategic growth initiatives, to provide for ongoing working capital, and for other corporate purposes.”<sup>13</sup> Petitioners claim that this will enable them to compete more effectively in the industry.<sup>14</sup>

## **Discussion**

Prior Board approval is required for of any public utility issuance of notes or other evidence of indebtedness payable more than 12 months after the issuance.<sup>15</sup> As the Petitioners

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<sup>10</sup> Id. at pp. 4-5. The 2020 Modified Revolving Credit Facilities was approved in a Board Order of April 17, 2021, in docket no. TF20120748. They are one component of Additional Financing arrangements previously approved by the Board in docket nos. TF20030257 and TF20070480.

<sup>11</sup> Id. at p. 6.

<sup>12</sup> Id. at pp. 6-7.

<sup>13</sup> Id. at 7.

<sup>14</sup> Id.

<sup>15</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,

request authorization to enter Financing Arrangements that may include maturity notes beyond one year, and they provide telecommunications services in New Jersey, Board approval is required for Licensees to enter the Financing Arrangements. 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.<sup>16</sup> As the Petitioner's assets will secure 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.<sup>17</sup>

Rate Counsel relies on the assertions and information provided by Petitioners that their participation in the proposed financing arrangements and 2023 Modified Revolving Credit Facilities will not impair Petitioners' ability to provide their services and will promote their corporate purposes.<sup>18</sup> Increased competition will benefit both residential and business customers in this state. Petitioners have provided a schedule of the outstanding debt, and through discovery provided pro-forma financial statements assuming issuance of the new debt, as well as current and pro-forma capital structures assuming issuance of the new debt, including debt to equity ratio and estimated cost of capital.<sup>19</sup> Pending Board satisfaction that the debt is made according to law, Rate Counsel has no objection to the Board's grant of Petitioners' requests under the Petition subject to the following conditions:

1. Petitioners comply with N.J.A.C. 14:1-5.9(b) which requires semiannual filings with the Board setting forth the amount of stocks, notes, bonds or other evidences of

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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.

<sup>16</sup> N.J.A.C. 14:1-5.9A.

<sup>17</sup> N.J.S.A. 48:3-9 and N.J.A.C. 14:1-5.9.

<sup>18</sup> Amended Verified Petition at p. 7.

<sup>19</sup> Id. at pp. 4, 5, 6; see also Responses of Petitioners to Discovery Requests 1 to 9 of BPU Staff at pp. 4-5, Attachment 3, and Confidential Attachment 4.

indebtedness, issued under any order of approval in this matter; and the extent to, and in detail, the manner in which the proceeds thereof have been disbursed.

2. None of the Licensees operating in New Jersey pledge any of their assets as collateral for the Financial Arrangements.

Thank you for your attention to this matter.

Very truly yours,

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

*/s/ Emily F. Smithman*

Emily F. Smithman, Esq.  
Assistant Deputy Rate Counsel

EFS/td  
c: Service List