



Agenda Date: 5/1/12

Agenda Item: IVA

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE VERIFIED PETITION OF)
INTELEPEER, INC. FOR APPROVAL TO ENTER INTO)
CERTAIN FINANCING ARRANGEMENTS)

ORDER

DOCKET NO. TF12030257

Parties of Record:

Dennis C. Linken, Esq., Scarinci & Hollenbeck, LLC, for Petitioner
Stefanie A. Brand, Director, Esq., New Jersey Division of Rate Counsel

BY THE BOARD:

IntelPeer, Inc. ("IntelPeer" or "Petitioner") filed a petition with the Board on or about March 22, 2012 ("Petition"), pursuant to N.J.S.A. 48:3-7 and 48:3-9, for approval to enter into certain financing arrangements. Specifically, IntelPeer intends to (i) increase its existing line of credit from \$10 million to \$15 million, (ii) enter into a term loan financing arrangement of \$5 million to refinance the company's existing equipment financing arrangements at more favorable terms, and (iii) enter into a financing arrangement which is expected to consist of one or more equipment loans for a collective amount of up to \$11 million ("new equipment loans") to issue promissory notes in the amount of Fifteen Million Dollars (\$15,000,000.00). IntelPeer, Inc. is organized under the laws of the State of Delaware and was formed on October 31, 2008, with principal offices located at 2855 Campus Drive, Suite 200, San Mateo, CA, 94403.

In New Jersey, IntelPeer is authorized to provide facilities-based and resold local exchange and interexchange services pursuant to authority granted by the Board in Docket No. TE09110897 on March 17, 2010. IntelPeer is also authorized by the Federal Communications Commission to provide international and domestic interstate telecommunications services as a non-dominant carrier.

The line of credit is expected to mature on January 31, 2014 and have an interest rate of Prime + 2.75%. The equipment refinancing loan maturity date is also expected to be January 31, 2014 and have an interest rate of Prime + 3.75%. The new equipment loan or loans are expected to have a maturity of 36 months, will be used to purchase or lease new equipment, and are expected to have an interest rate of between 10.6% and 14.5%. The new equipment loan(s) may also have IntelPeer offer warrants of up to 5% of the value of the financing amount, based on IntelPeer's most recent Preferred Stock strike price at the time the warrants

are issued.¹ The financing arrangements are expected to be secured by liens on IntelPeer's assets. The promissory notes are expected to mature on February 1, 2014.² The interest rate for the promissory notes is expected to be 6% per year. In consideration for the financing, IntelPeer will also issue warrants with a five (5) year expiration, which can be converted into stock of the company. IntelPeer intends to use the proceeds from the promissory notes for working capital and for other permissible general corporate purposes. The notes will be unsecured and subordinated to the existing debt arrangements of IntelPeer's existing creditors.

The Petitioner states that approval of the financing arrangements will serve the interest in promoting competition among telecommunications carriers by providing IntelPeer with the opportunity to strengthen its competitive position through access to greater financial resources. Petitioner also states that the financing arrangements will enable IntelPeer to bring services to new markets and allow more consumers to benefit from its competitive services. Furthermore, by increasing the breadth and scope of telecommunications services made available through an increased ability to expand IntelPeer's operations, greater access to capital will also strengthen IntelPeer's ability to bring competitive telecommunications services to consumers in the State of New Jersey. Petitioner emphasizes that participation in the financing arrangement will not result in a change in IntelPeer's management or in its day-to-day operations. Likewise, Petitioner states that the financing transaction will be transparent to customers and will not disrupt service or cause customer confusion or inconvenience.

The Division of Rate Counsel has reviewed this matter and, by letter dated April 18, 2012, has no objection to the Board approval of this Petition.

Our review indicates that the proposed financing transaction is in accordance with law and that the use of the proceeds associated therewith is appropriate. While there is no guarantee in this regard, especially given the competitive environment in which Petitioner operates, the Board is satisfied that the transaction will not have an adverse impact on Petitioner's operations in New Jersey.

Petitioner, in accordance with N.J.A.C. 14:1-12 et seq., filed a request for confidential treatment of certain unaudited and *pro forma* financial statements, customer information, and terms of the financing arrangements submitted to the Board's Staff in conjunction with its review of this matter.

After review, the Board FINDS that the proposed transactions are consistent with the applicable law and the public interest. The Board therefore approves the purposes thereof. The Board HEREBY AUTHORIZES Petitioner to participate in the financing arrangements described herein. This Order is issued subject to the following provisions:

¹IntelPeer has clarified that the issuance of the warrants will not result in a transfer of control because the warrants do not create a voting or equity interest in the company, but rather the possibility of conversion in the future into shares of stock. The number of warrants issued, on a converted basis, will also be a small fraction of the company's overall equity ownership. Nonetheless, IntelPeer will seek Board approval of any transfer of control that may result from an exercise of the warrants to the extent the warrants are ever exercised in a manner that would trigger the Board's transfer of control approval requirements.

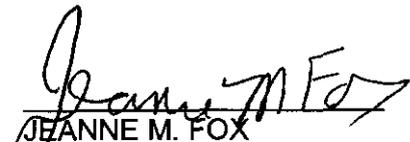
²Based on market conditions, the term of the financing arrangements may be set to mature on the date that is 364 days after the closing date, provided that upon receipt of the requisite regulatory approvals the maturity dates for the financing arrangements will be extended to the expected term of February 1, 2014.

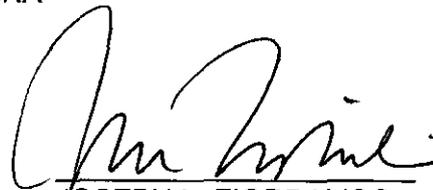
1. This Order shall not affect or in any way limit the exercise of the authority of the Board or the State of New Jersey in any future petition or in any proceeding regarding rates, costs of service, franchises, service, financing, accounting, capitalization, depreciation or any other matter affecting the Petitioner.
2. Petitioner shall notify the Board, within five (5) business days, of any material changes in the financing arrangement and shall provide complete details of such transactions, including any anticipated effects upon service in New Jersey.
3. Petitioner shall notify the Board of any material default in the terms of the financing arrangement within five (5) business days of such occurrence.
4. Notwithstanding anything to the contrary in the documents executed pursuant to the financing transaction or other supporting documents, a default or assignment under such agreement shall not constitute automatic transfer of Petitioner's assets. Board approval must be sought pursuant to N.J.S.A. 48:1-1 et seq. where applicable.
5. This Order shall not be construed as directly or indirectly fixing for any purpose whatsoever any value of tangible or intangible assets now owned or hereafter to be owned by the Petitioner.
6. This Order shall become effective upon the earlier of (a) five (5) days after the date hereof, or (b) the receipt by the Board of a Certification by or on behalf of Petitioner that (i) it has received a copy of this Order and that (ii) a copy of this Order has been hand-delivered to Rate Counsel or delivered to Rate Counsel via overnight delivery service.

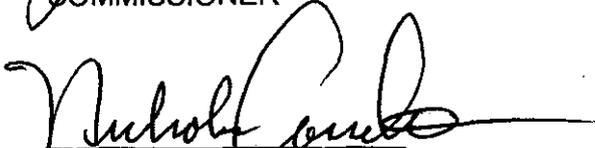
DATED: 5/1/12

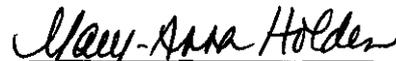
BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

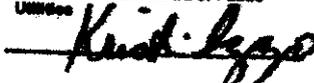

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST:


KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities


**In The Matter Of The Verified Petition Of
IntelePeer, Inc. For Approval To Enter Into Certain Financing Arrangements
DOCKET NO. TF12030257**

SERVICE LIST

Mark Beyer
Chief Economist
Board of Public Utilities
44 South Clinton Ave.
Trenton, NJ 08625-0350

Alex Moreau, Esq.
Deputy Attorney General
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, NJ 07101

Dennis C. Linken, Esq.
Scarinci Hollenbeck
1100 Valley Brook Avenue
Lyndhurst, NJ 07071

Robert Wojciak
Office of the Economist
Board of Public Utilities
44 South Clinton Ave.
Trenton, NJ 08625-0350

Stefanie A. Brand, Esq.
Director
Division of Rate Counsel
31 Clinton Street
11th Floor
P.O. Box 46005
Newark, NJ 07101

Ronald W. Del Sesto, Jr.,
Esq.
Bingham McCutchen LLP
2020 K Street, N.W.
Washington, D.C. 20006

Anthony Centrella, Director
Div. of Telecommunications
Board of Public Utilities
44 South Clinton Ave.
Trenton, NJ 08625-0350

Jose Rivera-Benitez, Esq.
Division of Rate Counsel
31 Clinton Street
11th Floor
P.O. Box 46005
Newark, NJ 07101

Kristin Manwarren, Esq.
Corporate Counsel
IntelePeer, Inc.
2300 15th Street, Suite 100
Denver, CO 80202