

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 11, 2006

IN RE:)	
)	
PETITION OF PAC-WEST TELECOMM, INC. FOR A)	DOCKET NO.
CERTIFICATE OF PUBLIC CONVENIENCE AND)	05-00314
NECESSITY TO PROVIDE COMPETING LOCAL)	
TELECOMMUNICATIONS SERVICES AND TO)	
PROVIDE FACILITIES-BASED AND RESOLD)	
INTEREXCHANGE TELECOMMUNICATIONS)	
SERVICES WITHIN THE STATE OF TENNESSEE)	

**INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on January 10, 2006, to consider the *Application for a Certificate to Provide Competing Local Telecommunications Services and Facilities-Based and Resold Interexchange Telecommunications Services* (the "*Application*") filed by Pac-West Telecomm, Inc. ("Pac-West") on November 21, 2005. In its *Application*, Pac-West seeks a certificate of public convenience and necessity ("CCN") for authority to provide competing local telecommunications services, including exchange access telecommunications services, and facilities-based and resold interexchange telecommunications services within the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

Pac-West's *Application* was made pursuant to, and was considered in light of, the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (2004), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders, and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995 ¹

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, *Memorandum Opinion and Order*, 14 FCC Rcd 11064 (1999); *Memorandum Opinion and Order*, 16 FCC Rcd 1247 (2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, *Order Approving Application of Level 3 Communications, LLC to Amend its Certificate of Public Convenience and Necessity* (June 28, 2002).

Furthermore, pursuant to Tenn Code Ann § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses

The January 10, 2006 Hearing

Pursuant to Tenn. Code Ann § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on December 22, 2005. No persons sought intervention prior to or during the Hearing. At the Hearing held on January 10, 2006, Mr. John F. Sumpter, Vice-President of Regulatory at Pac-West, participated in the Hearing, and was subject to examination by the Hearing Officer D. Billye Sanders, Esq , Waller Lansden Dortch & Davis, PLLC, 511 Union Street, Suite 2700, Nashville, Tennessee 37219-8966, appeared on behalf of Pac-West. Upon Pac-West's conclusion of the presentation of its proof, the Hearing Officer granted Pac-West's *Application* based upon the following findings of fact and conclusions of law:

I. Pac-West Telecomm, Inc.'s Qualifications

1 Pac-West is a corporation organized under the laws of the State of California on May 15, 1996, and was qualified to transact business in the State of Tennessee on August 22, 2005.

2. The complete street address of Pac-West's registered agent is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203 The complete street address of Pac-West's corporate office is 1176 W March Lane, Suite 250, Stockton, California 95207. The telephone number is (209) 926-4339 and the facsimile number is (209) 926-4585.

3 The *Application* and supporting documentary information existing in the record indicate that Pac-West has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, Pac-West's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience

4 Pac-West has the necessary capital and financial ability to provide the services it proposes to offer.

5 Pac-West has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

II. Proposed Services

Pac-West intends to provide competing local telecommunications services, including exchange access telecommunications services, and facilities-based and resold interexchange telecommunications services within the State of Tennessee. Pac-West plans to offer a broad variety of local exchange services, including basic exchange services, custom-calling features, directory assistance, operator services and directory listings. Emergency 911 and enhanced 911 calling will be provided to local exchange customers. Pac-West intends to provide all services required under TRA Rule 1220-4-8- 04(3)(b). Pac-West also plans to offer a full range of interexchange telecommunications services, including MTS, WATS and toll-free services

III. Permitting Competition to Serve the Public Convenience and Necessity

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Pac-West's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services

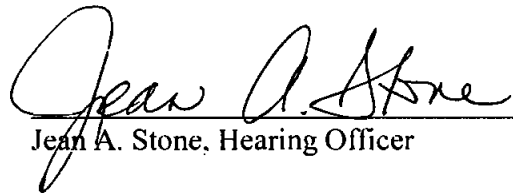
IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program

Pac-West has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

IT IS THEREFORE ORDERED THAT:

1. The *Application for a Certificate to Provide Competing Local Telecommunications Services and Facilities-Based and Resold Interexchange Telecommunications Services* filed by Pac-West Telecomm, Inc. is approved, and

2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.


Jean A. Stone, Hearing Officer