

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 5, 2006

IN RE:

**APPLICATION OF VO2 NETWORKX, INC. FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO PROVIDE COMPETING LOCAL
TELECOMMUNICATIONS SERVICES WITHIN THE
STATE OF TENNESSEE**

)
)
) **DOCKET NO.**
) **06-00055**
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)

**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 May 4, 2006, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by Vo2 Networkx, Inc. ("Vo2") on February 22, 2006. In its *Application*, Vo2 seeks a certificate of public convenience and necessity ("CCN") for authority to provide competing resold and facilities-based local exchange and interexchange telecommunications services within the State of Tennessee.¹

Legal Standard for Granting Certificate of Public Convenience and Necessity

Vo2'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:

¹ Vo2 previously was granted a CCN by an order issued February 11, 2004 in Docket No. 03-00641. Vo2's certification was revoked on September 26, 2005 for non-payment of fees. See *In re: Application of Vo2 Networkx, Inc. for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Competing Local Exchange Telecommunications Services*, Docket No. 03-00641, *Order Revoking Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Competing Local Exchange Telecommunications Services for Non-payment of Fees* (October 6, 2005).

(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, 1995.²

² 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, L.L.C. 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 May 4, 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 April 18, 2006. No persons sought intervention prior to or during the Hearing. At the Hearing held on May 4, 2006, Mr. Beau Peyton, Chief Operating Officer of Vo2, participated in the Hearing and was subject to examination by the Hearing Officer. Upon Vo2's conclusion of the presentation of its proof, the Hearing Officer granted Vo2's *Application* based upon the following findings of fact and conclusions of law:

I. Vo2 Networx, Inc.'s Qualifications

1. Vo2 is a corporation organized under the laws of the State of Tennessee on August 1, 2003.
2. The complete street address of Vo2's registered agent is National Registered Agents, Inc., 1900 Church Street, Suite 400, Nashville, Tennessee 37203. The complete street address of Vo2's corporate office is 1835 Moriah Woods Boulevard, Suite 1, Memphis, Tennessee 38117. The telephone number is (901) 842-5400 and the facsimile number is (901) 842-5402.
3. The *Application* and supporting documentary information existing in the record indicate that Vo2 has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of

Tennessee. Specifically, Vo2's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Vo2 has the necessary capital and financial ability to provide the services it proposes to offer.

5. Vo2 has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

II. Proposed Services

Vo2 intends to provide competing resold and facilities-based local exchange and interexchange telecommunications services within the State of Tennessee.

III. Permitting Competition to Serve the Public Convenience and Necessity

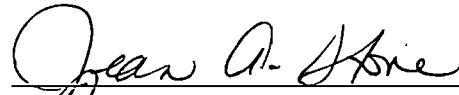
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Vo2's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. Small and Minority-Owned Telecommunications Business Participation Plan

Vo2 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 Certificate to Provide Competing Local Telecommunications Services* filed by Vo2 Networx, Inc. is approved;
2. Vo2 Networx, Inc. is directed to file a tariff with the Authority in conformance with TRA Rules; and
3. 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