

Nextlink'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.<sup>1</sup>

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<sup>1</sup> 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 August 24, 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 August 10, 2006. No persons sought intervention prior to or during the Hearing. At the Hearing held on August 24, 2006, Mr. David LaFrance, Senior Manager of Regulatory and External Affairs for Nextlink participated in the Hearing, and was subject to examination by the Hearing Officer. H. LaDon Baltimore, Farrar & Bates, LLP, 211 Seventh Avenue North, Suite 420, Nashville Tennessee 37219, appeared on behalf of Nextlink. Upon Nextlink's conclusion of the presentation of its proof, the Hearing Officer granted Nextlink's *Application* based upon the following findings of fact and conclusions of law:

#### **I. Nextlink, Inc.'s Qualifications**

1. Nextlink is a corporation organized under the laws of the State of Delaware on November 4, 2005.

2. The complete street address of Nextlink's registered agent is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee. The complete street address of Nextlink's corporate office is 11111 Sunset Hills Road, Reston, VA 20190. The telephone number is (703) 547-2682.

3. The *Application* and supporting documentary information existing in the record indicate that Nextlink has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of

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

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

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

## **II. Proposed Services**

Nextlink 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. Nextlink states that it plans to initially offer dedicated point-to-point or point-to-multipoint transport and data services to enterprise customers and other common carriers, and later expand its service to include a broader range of products and services. Nextlink therefore seeks authority to provide a full range of local exchange and interexchange services. Nextlink intends to focus on deploying technology to provide a core set of communications transport services tailored to meet specific needs of carriers, particularly commercial mobile radio service (CMRS) providers and enterprise business customers with high capacity point to point digital data communications needs.

## **III. Permitting Competition to Serve the Public Convenience and Necessity**

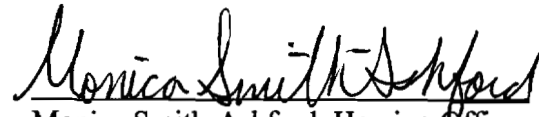
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Nextlink's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering 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**

Nextlink 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 of Nextlink, Inc.* filed by Nextlink, 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.

  
Monica Smith-Ashford, Hearing Officer