

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 18, 2006

IN RE:

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)	
APPLICATION OF YMAX COMMUNICATIONS CORP.)	DOCKET NO.
FOR A CERTIFICATE OF PUBLIC CONVENIENCE)	06-00067
AND NECESSITY TO PROVIDE FACILITIES-BASED)	
COMPETING LOCAL EXCHANGE)	
TELECOMMUNICATIONS SERVICES IN 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 July 27, 2006 to consider the *Application of YMax Communications Corp. for Certificate to Provide Facilities-Based Competing Local Exchange Telecommunications Services* (the "*Application*") filed by YMax Communications Corp. ("YMax") on March 14, 2006. In its *Application*, YMax 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 exchange and interexchange telecommunications services within the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

YMax'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, 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 July 27, 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 July 17, 2006. No persons sought intervention prior to or during the Hearing. At the Hearing held on July 17, 2006, Mr. Peter Russo, Vice president and chief financial officer for YMax, participated in the Hearing, and was subject to examination by the Hearing Officer.

Upon YMax's conclusion of the presentation of its proof, the Hearing Officer took YMax's application under advisement. On August 21, 2006, Staff issued a data request to YMax to further aid the Authority in its consideration of YMax's *Application*. As a result of YMax's response received on August 26, 2006, the Hearing Officer granted YMax's *Application* based upon the following findings of fact and conclusions of law:

I. YMax Communications Corp.'s Qualifications

1. YMax is a corporation organized under the laws of the State of Delaware on May 24, 2005 and qualified to transact business in the State of Tennessee on February 24, 2006.

2. The complete street address of YMax's registered agent is CT Corporation System at 800 South Gay Street, Knoxville Tennessee 37929. The complete street address of YMax's corporate office is 223 Sunset Avenue, Suite 223, Palm Beach, Florida 33480. The telephone number is (561) 832-3021.

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

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

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

II. Proposed Services

YMax intends to provide competing facilities-based local exchange telecommunications services, including exchange access telecommunications services, and resold interexchange telecommunications services within the State of Tennessee. YMax will offer service throughout the areas currently served by BellSouth. YMax does not intend to deploy switches initially; YMax will offer services using underlying network elements provided by BellSouth. YMax local traffic will be routed entirely over the networks of the underlying incumbent LEC.

III. Permitting Competition to Serve the Public Convenience and Necessity

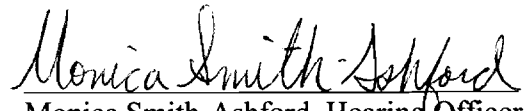
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of YMax's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering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

YMax 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 YMax Communications Corp. for Certificate to Provide Facilities-Based Competing Local Exchange Telecommunications Services* filed by YMax Communications Corp. 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