

- (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 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. Bob Collie, Senior Vice President of ENA Services, participated in the Hearing, and was subject to examination by the Hearing Officer. April A. Ingram Esq., Boulton Cummings Connors and Berry, PLC, LLP, 1600 Division Street, Suite 700, Nashville, Tennessee 37203, appeared on behalf of ENA Services. Upon ENA Services' conclusion of the presentation of its proof, the Hearing Officer granted ENA Services' *Application* based upon the following findings of fact and conclusions of law:

#### **I. ENA Services' Qualifications**

1. ENA Services is a corporation organized under the laws of the State of Delaware on January 26, 2006, and was qualified to transact business in the State of Tennessee on February 7, 2006.

2. The complete street address of ENA Services' registered agent is John Gilmore, 1600 Division Street, Suite 700, Nashville, Tennessee 37203. The complete street address of ENA Services' corporate office is 1101 McGavock Street, Nashville, Tennessee 37203. The telephone number is (615) 312-6000.

3. The *Application* and supporting documentary information existing in the record indicate that ENA Services has the requisite technical and managerial ability to

provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, ENA Services' senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

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

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

## **II. Proposed Services**

ENA Services 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. ENA Services seeks to initially resell services and provide service using unbundled network elements utilizing the facilities of the existing local exchange carriers or other competitive carriers that presently serve Tennessee. ENA Services will offer both voice and data services, long distance, primary rate interface, and T1 voice and data products in Tennessee via an advanced data transmission and network technology service, including digital subscriber line ("DSL"), Ethernet, frame relay, high speed serial interface and other interconnection and wide area network protocols. Initially, ENA Services will offer these services to public and private schools, local and interexchange carriers, Internet service providers, governmental entities and small, medium and large businesses.

## **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 ENA Services' *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services

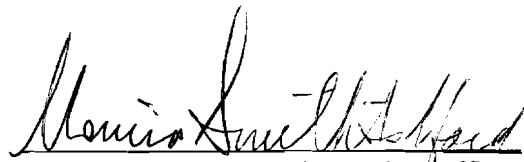
markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

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

ENA Services 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 ENA Services, LLC* filed by ENA Services, LLC 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