

(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. An intervention was filed prior to the hearing but was later withdrawn.² At the Hearing held on July 27, 2006, Mr. Stan Mosley, President of Telescan, participated in the Hearing, and was subject to examination by the Hearing Officer. Upon Telescan's conclusion of the presentation of its proof, the Hearing Officer granted Telescan's *Application* based upon the following findings of fact and conclusions of law:

I. Telescan, Inc.'s Qualifications

1. Telescan is a corporation organized under the laws of the State of Tennessee on April 3, 1987.

2. The complete street address of Telescan's registered agent is Stan Mosley, 204½ West Oakland Avenue, Johnson City TN 37602. The complete street address of Telescan's corporate office is P. O. Box 4747, 204½ West Oakland Avenue, Johnson City, Tennessee 37602. The telephone number is (423) 282-5043.

² On June 13, 2006, United Telephone Southeast, Inc. d/b/a Embarq ("Embarq") filed a petition to intervene citing the question of whether Telescan is committed to complying with Tennessee's county wide calling statute as its major concern. On June 15, 2006, Telescan filed a response to a TRA Staff Data Request stating it intended to comply with the Tennessee county wide calling statute. As a result, Embarq withdrew its petition to intervene on June 20, 2006.

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

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

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

II. Proposed Services

Telescan 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. Telescan states that it intends to offer local exchange service to customers located in non-rural exchange carriers' service areas of Tennessee and interexchange service statewide. Telescan seeks authority to provide all forms of regulated telecommunications throughout the State of Tennessee and has been providing resold long distance, operator services and customer owned coin operated telephones ("COCOT") services in Tennessee since 1995.

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 Telescan's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the

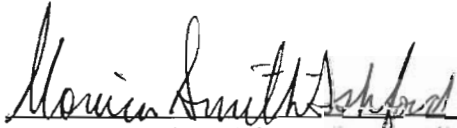
telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

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

Telescan 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 Telescan, Inc.* filed by Telescan, 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