

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 18, 2007

IN RE:)	
)	
PETITION OF NEUTRAL TANDEM-TENNESSEE, LLC)	DOCKET NO.
FOR CCN)	06-00268

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 December 20, 2006, to consider the *Application for Certificate to Provide Competing Local and Interexchange Telecommunications Services* (the “*Application*”) filed by Neutral Tandem-Tennessee, LLC (“NT-TN” or “Applicant”) on October 25, 2006. In its *Application*, NT-TN seeks a certificate of public convenience and necessity (“CCN”) for authority to provide both facilities-based and resold non-switched dedicated and private line services that will provide Incumbent Local Exchange Carriers (“ILECs”), Competitive Local Exchange Carriers (“CLECs”), Internet Service Providers (“ISPs”), paging and cellular companies, and government and corporate customers with broadband transmission services within the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

NT-TN’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

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

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).

telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The December 20, 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 December 6, 2006. No persons sought intervention prior to or during the Hearing. At the Hearing held on December 20, 2006, Mr. Ron Gavillet, Executive Vice President of External Affairs and General Counsel of Neutral Tandem, Inc., the parent company participated in the Hearing, and was subject to examination by the Hearing Officer. Upon NT-TN's conclusion of the presentation of its proof, the Hearing Officer granted NT-TN's *Application* based upon the following findings of fact and conclusions of law:

I. Neutral Tandem-Tennessee, LLC's Qualifications

1. NT-TN is a corporation organized under the laws of the State of Delaware on August 28, 2006 for the purpose of providing services in Tennessee and was qualified to transact business in the State of Tennessee on September 12, 2006.

2. Corporation Service Company is NT-TN's registered agent and its complete street address is 2908 Poston Avenue, Nashville, Tennessee 37203. The complete street address of NT-TN's corporate office is 1 South Wacker Drive, Suite 200, Chicago, Illinois 60606. The telephone number is (312) 384-8040.

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

4. NT-TN has the necessary capital and financial ability to provide the services it proposes to offer.

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

II. Proposed Services

NT-TN seeks authority to provide both facilities-based and resold non-switched dedicated and private line services that will provide ILECs, CLECs, ISPs, paging and cellular companies, and government and corporate customers with broadband transmission services. Applicant will not be marketing to residential or small businesses, but primarily to other carriers. Applicant's initial service offering will consist of transport and access services for competitive carriers. NT-TN has no plans to provide dial tone services to end user customers at this time but does intend to expand its service offerings to include facilities-based and resold local exchange services and a full range of 1 + interexchange telecommunications services on a resale basis, as market conditions warrant.

NT-TN states that it intends to use a tandem switch and lease fiber optic facilities to provide services in Tennessee. Applicant states that while it anticipates having the necessary facilities available upon commencement of services in Tennessee, it may resell the high capacity special access services, such as DS-1, DS-3, and multiplexing services of other facilities-based carriers where it lacks facilities and customer demand warrants.

NT-TN represents that its services will satisfy the minimum standards established by the TRA. The company will file and maintain tariffs in the manner prescribed by the TRA and will meet minimum basic local standards, including quality of service and billing standards required of all ILECs regulated by the TRA. Applicant will not require customers to purchase Customer Premises Equipment ("CPE"), which cannot be used with the ILECs' systems. The principal officers have several years of telecommunications experience and expertise.

With respect to geographic coverage area for its intended services, Applicant proposes to provide both facilities-based and resold non-switched dedicated and private line services in the areas that are currently being served by BellSouth, GTE, Sprint, and any other eligible ILEC which is designated open to competition.

III. Permitting Competition to Serve the Public Convenience and Necessity

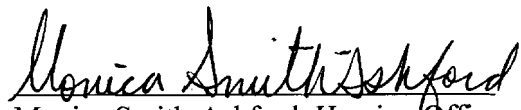
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of NT-TN's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering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

NT-TN 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 and Interexchange Telecommunications Services* filed by Neutral Tandem-Tennessee, LLC is approved.
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