

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 30, 2007

IN RE:	)	
	)	
APPLICATION OF PNG TELECOMMUNICATIONS, INC.	)	DOCKET NO.
FOR CCN TO PROVIDE COMPETING FACILITIES-BASED	)	06-00289
AND RESOLD LOCAL EXCHANGE AND EXCHANGE	)	
ACCESS TELECOMMUNICATION 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 January 25, 2007, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the “*Application*”) filed by PNG Telecommunications, Inc. d/b/a PowerNet Global Communications (“PNG” or “Applicant”) on November 21, 2006. In its *Application*, PNG seeks a certificate of public convenience and necessity (“CCN”) for authority to provide competing local telecommunications services, including facilities based and resold local exchange and exchange access telecommunications services within the State of Tennessee.

**Legal Standard for Granting Certificate of Public Convenience and Necessity**

PNG’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>

---

<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 January 25, 2007 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 January 12, 2007. No persons sought intervention prior to or during the Hearing. At the Hearing held on January 25, 2007, Mr. Dennis Packer, General Counsel of PNG, participated in the Hearing, and was subject to examination by the Hearing Officer. D. Billye Sanders of Waller Lansden Dortch & Davis, LLP, Nashville City Center, 511 Union Street, Suite 2700, Nashville, Tennessee 37219-8966 appeared on behalf of PNG. Upon PNG's conclusion of the presentation of its proof, the Hearing Officer granted PNG's *Application* based upon the following findings of fact and conclusions of law:

#### **I. PNG Telecom, Inc.'s Qualifications**

1. PNG is a corporation organized under the laws of the State of Ohio on October 19, 1992 and was authorized to transact business in Tennessee on September 24, 1999. PNG was also authorized to resell interexchange long distance by Authority Order in Docket No. 03-00545 issued on December 16, 2003.

2. The complete street address of PNG's registered agent is CT Corporation System, 800 S. Gay Street, Suite 2021, Knoxville Tennessee 37929. The complete street address of PNG's corporate office is 100 Commercial Drive, Fairfield, Ohio 45014. The telephone number is (513) 645-4932.

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

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

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

## **II. Proposed Services**

PNG intends to provide local exchange services including, but not limited to, basic local service, custom calling features, and specialized data transmission services primarily for commercial subscribers and to residential subscribers. PNG proposes to provide local exchange service via resale and other commercial arrangements. PNG will rely on the technical expertise of its underlying carrier and BellSouth Telecommunications, Inc. from which PNG will be obtaining resold services. Applicant's underlying carrier will be responsible for repair and maintenance of the telecommunications network; however, PNG has established a customer care organization with a toll free number regarding network repair and maintenance. PNG's customer service representatives will handle customer service inquiries via the toll-free number and representatives are available twenty-four hours per day. PNG's toll free number will be printed on its customers' monthly billing statements. PNG provided the Authority with a Notice of Filing to all eighteen incumbent Local Exchange Providers in Tennessee.

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

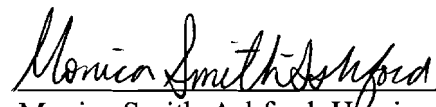
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of PNG's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

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

PNG 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 Telecommunications Services* filed by PNG Telecommunications, Inc d/b/a PowerNet Global Communications 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