

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 30, 2007

IN RE:)	
)	
APPLICATION OF ONETONE TELECOM, INC. FOR A)	DOCKET NO.
CCN TO PROVIDE COMPETITIVE LOCAL)	06-00307
TELECOMMUNICATIONS SERVICES)	

**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 OneTone Telecom, Inc. (“OneTone”) on December 12, 2006. In its *Application*, OneTone seeks to amend the certificate to provide resold local exchange services granted to OneTone in TRA Docket No. 06-00023 to include authority to provide competing local telecommunications services, including exchange access, within the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

OneTone’s *Application* was made pursuant to, and was considered in light of, the criteria for granting a certificate of public convenience and necessity (“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 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. Travis Crane, Chairman and Chief Executive Officer of OneTone, participated in the Hearing, and was subject to examination by the Hearing Officer. OneTone withdrew its request that the TRA waive any customer billing deposit, advance payment or other rules that are inconsistent with the offering of prepaid services,² stating that OneTone does not require a deposit from customers for local service. Upon OneTone's conclusion of the presentation of its proof, the Hearing Officer stated that the Authority will issue a separate CCN to OneTone instead of amending its existing one, and granted OneTone's *Application* based upon the following findings of fact and conclusions of law:

I. OneTone Telecom, Inc.'s Qualifications

1. OneTone is a corporation organized under the laws of the State of South Carolina as Electric City Communications, Inc. on March 4, 1996. Applicant changed its name to Talon Communications, Inc. on July 16, 1997 and to OneTone Telecom, Inc. on August 18, 2000. OneTone has no corporate affiliates and was issued a certificate to transact business in Tennessee on December 21, 2005.

2. The complete street address of OneTone's registered agent is CT Corporation System, 800 S. Gay Street, Suite 2021, Knoxville Tennessee 37929. The complete street address of OneTone's corporate office is 100 Century Plaza, Suite 9-1, Seneca, South Carolina, 29672. The telephone number is (864) 985-1735.

² See *Application*, p. 4 (December 12, 2006).

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

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

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

II. Proposed Services

OneTone intends to provide competing local telecommunications services, including exchange access telecommunications services within the State of Tennessee. OneTone will offer business and residential local exchange services, including prepaid local services, to Tennessee consumers pursuant to a negotiated or adopted resale and interconnection agreement with BellSouth Telecommunications, Inc. and potentially other incumbent local exchange companies in Tennessee. OneTone served notice of its application to all eighteen Incumbent Local Exchange Providers in Tennessee on December 11, 2006.

III. Permitting Competition to Serve the Public Convenience and Necessity

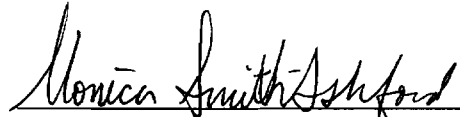
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of OneTone's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering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

OneTone 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 OneTone Telecom, 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