

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 21, 2007

IN RE:)	
)	
APPLICATION OF DIALTONE & MORE, INC.)	DOCKET NO.
FOR A CCN TO PROVIDE COMPETING LOCAL AND)	07-000164
INTEREXCHANGETELECOMMUNICATIONS 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 December 5, 2007, to consider the *Application for Authority to Provide Competing Local Telecommunications Services* (the “*Application*”) filed by Dialtone & More, Inc. (“Dialtone” or “Applicant”) on July 9, 2007 and supplemented in a data response dated August 20, 2007.¹

Legal Standard for Granting Certificate of Public Convenience and Necessity

Dialtone’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 (2006), 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

¹ Dialtone requested to amend its *Application* to include authority to provide intrastate interexchange as well as local and exchange access telecommunications services.

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.

* * *

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 December 5, 2007 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), after two previous attempts to schedule a hearing in this matter, on November 29, 2007, a *Notice of the Hearing* was issued by the Hearing Officer setting a hearing on December 5, 2007. No persons sought intervention prior to or during the Hearing. Also on November 29, 2007, Dialtone filed a request to participate telephonically in the Hearing. The Hearing Officer granted Dialtone's request in an *Order Granting Electronic Participation in Hearing* issued on November 29, 2007.

During the Hearing held on December 5, 2007, Ms. Kim Smith, Vice President of Dialtone, participated telephonically on behalf of Dialtone and was subject to examination by the Hearing Officer. Mr. Chris Collier, Director of Regulatory Affairs for Telecom Professionals, acting as a consultant for Dialtone, telephonically monitored the proceedings. In accordance with the *Order Granting Electronic Participation in Hearing*, Ms. Janelle Scoggins with the Law Offices of Jones & Johns, a licensed Notary Public in good standing in the state of Georgia, administered the testimonial oath to Ms. Smith and remained physically present with her throughout the examination and testimony. A properly executed Witness Certification and Affidavit was received on December 20, 2007.

During her testimony Ms. Smith affirmed her pre-filed testimony and stated that Dialtone will comply with all of Tennessee's public interest obligations and responsibilities as mandated in TRA Rule 1220-4-8-.04(3)(b) and (c). Upon Dialtone's conclusion of the presentation of its proof, the Hearing Officer granted Dialtone's *Application* based upon the following findings of fact and conclusions of law:

I. Dialtone's Qualifications

1. Dialtone was incorporated in the state of Georgia on September 9, 1997 and was authorized to transact business in Tennessee on July 5, 2005.

2. The complete street address of the registered agent for Dialtone, CT Corporation System is 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929. The complete street address of Dialtone's corporate office is 6784 West Broad Street, Douglasville, Georgia 30134. The telephone number is (888) 494-9440.

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

access services and transport telecommunications services within the State of Tennessee. Specifically, Dialtone's management team possesses sufficient business, technical and operational telecommunications experience.

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

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

II. Proposed Services

Dialtone proposes to offer its services throughout the state of Tennessee in the areas currently being served by BellSouth and Embarq, and intends to offer a broad range of telecommunications services through the use of its own facilities, resold facilities, and through a combination of these provisioning methods. Dialtone anticipates collocating related electronic equipment in the central offices of the ILECs and expects to offer a broad variety of local exchange services, primarily to residential customers in Tennessee. Dialtone provided the Authority with a *Notice of Filing* to all eighteen ILECs in Tennessee.

III. Permitting Competition to Serve the Public Convenience and Necessity

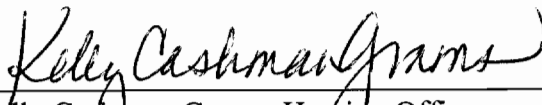
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Dialtone's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering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

Dialtone 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 Authority to Provide Competing Local Telecommunications Services* as filed and supplemented by Dialtone & More, Inc., 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 the date of this Order.
3. This Initial Order shall become a Final Order of the Tennessee Regulatory Authority, if no petition for reconsideration or appeal of this Order is filed prior to the expiration of the fifteen (15) day appeal period.



Kelly Cashman-Grams, Hearing Officer