

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**October 3, 2007**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF AERO COMMUNICATIONS, LLC</b>	)	<b>DOCKET NO.</b>
<b>FOR A CCN TO PROVIDE COMPETING LOCAL</b>	)	<b>07-00165</b>
<b>TELECOMMUNICATIONS SERVICES IN TENNESSEE</b>	)	

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**INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on September 13, 2007, to consider the *Petition for Certificate to Provide Competing Local Telecommunications Services* (the "*Petition*") filed by Aero Communications, LLC ("Aero," "Company" or "Applicant") on July 6, 2007. In its *Petition*, Aero seeks a certificate of public convenience and necessity for authority to provide competing local telecommunications services, including facilities-based and resold local exchange, exchange access and interexchange services, within the State of Tennessee.

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

Aero's *Petition* 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 (Supp. 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 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.

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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 September 13, 2007 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), on August 30, 2007, public notice of the Hearing in this matter was issued by the Hearing Officer. No persons sought intervention prior to or during the Hearing. On September 13, 2007, Mr. Todd Heinrich, President and CEO of Aero, appeared personally to participate in the Hearing and was subject to examination by the Hearing Officer. Mr. Heinrich made corrections to Page 4 of his pre-filed testimony pertaining to employee changes that have taken place within the Company and described more fully Aero's

relationship with Heartland Communications and Computer Services Incorporated. Mr. Heinrich further stated that Aero 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 Aero's conclusion of the presentation of its proof, the Hearing Officer granted Aero's *Petition* based upon the following findings of fact and conclusions of law:

**I. Aero Communications, LLC's Qualifications**

1. Aero is a corporation organized under the laws of the State of Kentucky on October 27, 1999 and was licensed to transact business in Tennessee by the Secretary of State on October 6, 2005.

2. The complete street address of the registered agent for Aero, CT Corporation, is 800 South Gay Street, Suite 2021, Knoxville, Tennessee, 37902. The complete street address of Aero's corporate office is 1301 Broadway, Suite 126, Paducah, Kentucky 42001. The telephone number is (270) 448-2376.

3. The *Petition* and supporting documentation in the record indicate that Aero has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Additionally, Aero's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

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

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

## **II. Proposed Services**

Aero's initial line of local services will be comparable to that currently offered by the incumbent local exchange carriers ("ILECs"), and it expects to offer a broad variety of local exchange services to residential and business customers in Tennessee. Initially, Aero plans to offer basic access line service, Private Branch Exchange ("PBX"), Direct Inward Dialing ("DID"), optional calling features, directory assistance, directory services, and operator services, as well as all services required under TRA Rule 1220-4-8-.04. Aero anticipates offering its services throughout the state of Tennessee beginning in local exchange areas currently being served by BellSouth/AT&T through the use of its own and resold facilities. Aero plans to offer said local exchange services by installing and collocating its switching and ancillary equipment in the central offices of ILECs. These facilities will likely comprise of softswitches, which will enable Aero to provide both voice and data services. Aero does not plan to offer services in any areas served by any incumbent local exchange telephone company with fewer than 100,000 total access lines. Aero provided the Authority with a Notice of Filing to all eighteen ILECs in Tennessee.

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

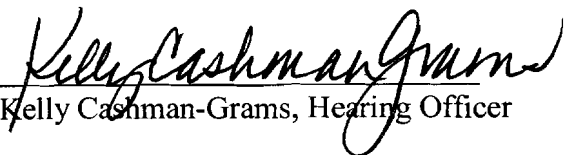
Upon a review of the *Petition* and the record in this matter, the Hearing Officer finds that approval of Aero's *Petition* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the development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

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

Aero 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 *Petition for Certificate to Provide Competing Telecommunications Services in Tennessee* filed by Aero Communications, 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 the date of this Order.
3. This Interim 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