

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 8, 2008

IN RE:

APPLICATION OF NEXUS COMMUNICATIONS, INC. FOR  
A CCN TO PROVIDE COMPETING LOCAL EXCHANGE  
AND INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES IN TENNESSEE

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DOCKET NO.  
07-00241

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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 December 5, 2007, to consider the *Application for Certificate to Provide Competing Local Exchange and Interexchange Telecommunications Services* (the “*Application*”) filed by Nexus Communications, Inc. (“Nexus”) on October 17, 2007. In its *Application*, Nexus seeks a certificate of public convenience and necessity for authority to provide competing local telecommunications services, including facilities-based, resold local exchange and interexchange telecommunications services within the State of Tennessee.

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

Nexus’ *Application* was made pursuant to and 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 . . .

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(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 December 5, 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 November 16, 2007. The notice was reissued on November 29, 2007, and no persons sought intervention prior to or during the Hearing.

On November 20, 2007, Nexus filed a request to participate in the Hearing by telephone. The Hearing Officer granted Nexus' request for telephonic participation in an *Order Granting Electronic Participation In Hearing* issued on November 20, 2007.

During the Hearing held on December 5, 2007, Mr. Steven Fenker, President of Nexus, participated telephonically and was subject to examination by the Hearing Officer. In accordance with the *Order Granting Electronic Participation In Hearing*, Mr. Muwafek Abdullah, a licensed Notary Public in good standing in the state of Ohio, administered the testimonial oath to Mr. Fenker and remained physically present with him throughout his examination and testimony. In addition, a properly executed *Witness Certification and Affidavit* was received by the Authority on December 6, 2007.

During his testimony, Mr. Fenker stated that Nexus plans on providing local exchange and interexchange service to both residential and business customers statewide. He stated that Nexus views issues involving anti-slamming laws seriously and utilizes CCI, a third party vendor located in the state of Washington, for verification of customer orders before switching customers away from other carriers. Mr. Fenker further stated that Nexus 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 Nexus' conclusion of the presentation of its proof, the Hearing Officer granted Nexus' *Application* based upon the following findings of fact and conclusions of law:

**I. Nexus' Qualifications**

1. Nexus is a corporation organized under the laws of the State of Ohio and was licensed to transact business in Tennessee by the Secretary of State on June 14, 2007.

2. The complete street address of the registered agent for Nexus, TSC Corporate Services, Inc., is 1900 Church Street, Suite 400, Nashville TN 37203. The complete street address of the corporate office of Nexus is 3629 Cleveland Avenue, Suite C, Columbus, Ohio 43224. The telephone number is (740) 549-1092.

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

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

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

## **II. Proposed Services**

Nexus intends to provide local exchange service to customers located in non-rural local exchange carriers' service areas, and switched or dedicated interexchange services including One Plus or toll free 800 inbound calling, calling cards and data services, statewide. Nexus will utilize its own facilities, resold facilities, and a combination of these provisioning methods, and will offer resell services in areas primarily served by AT&T and Sprint. Nexus has an Unbundled Network Elements-Platform ("UNE-P") replacement agreement with AT&T/Bellsouth. A Notice of Filing dated October 17, 2007 sent by Nexus to all eighteen Incumbent Local Exchange Carriers in Tennessee was provided to this Authority with the initial *Application*.

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

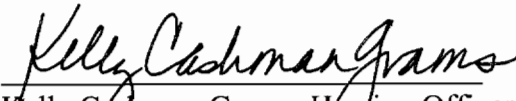
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Nexus' *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the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

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

Nexus 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 Exchange and Interexchange Telecommunications Services* filed by Nexus Communications, Inc. is approved.
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen 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-day appeal period.

  
Kelly Cashman-Grams, Hearing Officer