

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 29, 2008

IN RE:

PETITION OF BALDWIN COUNTY INTERNET/DSSI  
SERVICE, L.L.C. FOR AUTHORITY TO PROVIDE  
COMPETING LOCAL AND INTEREXCHANGE  
TELECOMMUNICATIONS SERVICES IN THE STATE OF  
TENNESSEE

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DOCKET NO.  
08-00026

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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 July 24, 2008, to consider the *Application for a Certificate of Convenience and Necessity to Provide Competing Telecommunications Services* (the “*Application*”) filed by Baldwin County Internet/DSSI Service, LLC (“BCI”) on February 12, 2008. In its *Application*, BCI seeks a Certificate of Public Convenience and Necessity (“CCN”) for authority to provide competing local telecommunications services, including exchange access telecommunications services within the State of Tennessee.

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

BCI’s *Application* was made pursuant to and considered in light of the criteria for granting a 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 July 24, 2008 Hearing**

After issuing public notices twice previously in the docket,<sup>1</sup> following TRA Staff's confirmation of BCI's desire to move forward, pursuant to Tenn. Code. Ann. § 65-4-204 (2004),

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<sup>1</sup> On May 7, 2008, the Hearing Officer issued a Notice of Hearing setting the hearing in this matter for May, 22, 2008. On May 12, 2008, BCI filed a letter with the Authority advising that its intended witnesses were no longer able to attend a hearing on May 22, 2008, and further requested a short continuance and re-scheduling of the hearing. On May 13, 2008, the Hearing Officer issued a Notice of Cancellation of the May 22, 2008 hearing. Subsequently, on May 20, 2008, the Hearing Officer issued a Notice of Hearing resetting the hearing on June 12, 2008. Thereafter, on the morning of June 12, 2008, upon the verbal request of Mike Giles, consultant for BCI, the hearing in this matter was continued indefinitely.

the Hearing Officer re-noticed the hearing in this matter on July 10, 2008. No persons sought intervention prior to or during the hearing. At the hearing held on July 24, 2008, Mr. Harry Bailes, President of BCI, accompanied by Mr. Mike Giles, consultant for BCI, participated in the hearing, and was subject to examination by the Hearing Officer. During the hearing, Mr. Bailes stated that BCI will initially provide high speed Internet connectivity through leased facilities on a wholesale basis. While not immediately, BCI does plan to install facilities in the future. Mr. Bailes affirmed that BCI 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 the conclusion of the presentation of proof, the Hearing Officer granted BCI's *Application* based upon the following findings of fact and conclusions of law:

**I. BCI's Qualifications**

1. BCI is a limited liability company organized under the laws of the State of Alabama on January 17, 2002. BCI was licensed to transact business in Tennessee by the Secretary of State on October 26, 2007.

2. The complete street address of the registered agent for BCI, Incorporating Services Ltd., Inc., is 7176 Forrest Oaks Drive, Nashville, Tennessee 37221. The complete street address of the corporate office of BCI is 22645 Canal Road, Suite B, Orange Beach, Alabama 36561. The telephone number is (251) 224-0800.

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

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

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

## **II. Proposed Services**

BCI primarily intends to provide transport services to other service providers who, in turn, provide local exchange service throughout the state. BCI does not provide any content on the circuits; only transport of other companies' data, voice (usually VoIP), cable television and Internet traffic. BCI provides high-speed/bandwidth fiber optic transport between two points of interconnection ("POI"). BCI does not intend to provide switched service in Tennessee at this time.

BCI provided documentation indicating that it had served notice of its application to provide competing local telecommunications services to all eighteen Incumbent Local Exchange Carriers in Tennessee on February 11, 2008.

## **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 BCI'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**

BCI 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 Baldwin County Internet/DSSI Service, LLC 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 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 day appeal period.

  
Kelly Cashman-Grams, Hearing Officer