

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 15, 2008**

**IN RE:**

**APPLICATION OF ACCESS FIBER GROUP, INC. FOR  
CERTIFICATE TO PROVIDE COMPETING LOCAL  
TELECOMMUNICATIONS SERVICES IN TENNESSEE**

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**DOCKET NO.  
08-00044**

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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 June 12, 2008, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the “*Application*”) filed by Access Fiber Group, Inc. (“AFG”) on March 24, 2008. In its *Application*, AFG seeks a Certificate of Public Convenience and Necessity (“CCN”) for authority to provide competing local telecommunications services, including facilities-based and resold local exchange, exchange access and interexchange telecommunications services within the State of Tennessee.

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

AFG’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 June 12, 2008 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 May 20, 2008. No persons sought intervention prior to or during the Hearing. At the Hearing held on June 12, 2008, Mr. Daniel T. Moore, President and Chief Executive Officer of AFG, participated in the Hearing, adopted his pre-filed testimony and was subject to examination by the Hearing Officer. Mr. Moore stated that AFG is primarily an underlying raw infrastructure provider and intends to install its own facilities, by building

metro networks connecting major Points of Presence (“POP”), key business districts and aggregation points. AFG will build fiber into buildings, terminate with an optical patch panel and physically connect their customers to their choice of carriers, providing the last mile metro network piece for the solution. AFG will provide other carriers, large businesses and universities with layer one infrastructure; the actual fiber cable capacity to connect businesses of their choice to the other end of the network. Customers will build, operate and maintain their own network, utilizing the dark fiber provided by AFG. AFG is targeting a very selective market and expects to serve anywhere from three to six new customers per year. These customers typically seek private networking solutions for high-end data on a long-term basis.

Mr. Moore testified that AFG will not be providing typical dial tone services and will therefore have no responsibility for compliance with Tennessee’s public interest obligations and responsibilities as mandated in TRA Rule 1220-4-8-.04(3)(b) and (c). However, AFG is exploring education discounts for universities and school systems and expects to offer a substantial discount, under AFG’s tariff. Upon conclusion of the presentation of proof, the Hearing Officer granted AFG’s *Application* based upon the following findings of fact and conclusions of law:

**I. AFG’s Qualifications**

1. AFG is a corporation organized under the laws of the State of Delaware and was licensed to transact business in Tennessee by the Secretary of State on October 1, 2007.

2. The complete street address of the registered agent for AFG, CT Corporation Systems, is 800 S. Gay Street, Suite 2021, Knoxville TN 37929. The complete street address of the corporate office of AFG is 201 Summit Parkway, Birmingham, Alabama 35209. The telephone number is (205) 492-8328.

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

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

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

## **II. Proposed Services**

AFG proposes to offer services throughout the State of Tennessee. AFG expects to supply dark fiber services terminating to a fiber optic patch panel at customer locations, as indicated in its Indefeasible Right of Use agreements with customers, and will not be deploying switches or providing toll/switched local services. AFG seeks regulatory approval to offer dark fiber services to all consumers within its footprint, however, the Applicant's primary focus will be wholesale services to other service providers. According to the *Application*, AFG plans to offer dark fiber service in major metropolitan areas and has no plans to offer service in areas where the Incumbent Local Exchange Carrier ("ILEC") services fewer than 100,000 total access lines or the local population is under 300,000. Nevertheless, the Applicant may choose to consider future opportunities where the ILEC services fewer than 100,000 access lines, and explore dark fiber opportunities in any region in the state where a customer requests a specific solution. AFG submitted documentation indicating that it served notice of its application to provide competing local telecommunications services to all eighteen ILECs in Tennessee.

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

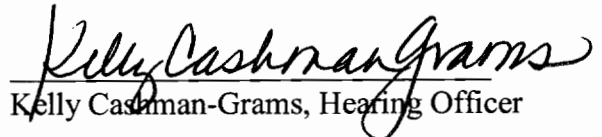
Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of AFG's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the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

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

AFG 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 Access Fiber Group, 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 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