

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 3, 2008

IN RE:

APPLICATION OF ONWAV, INC. FOR A CCN TO
OPERATE AS A COMPETING LOCAL EXCHANGE
CARRIER IN TENNESSEE

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DOCKET NO.
08-00046

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 June 12, 2008, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by OnWav, Inc. ("OnWav") on March 31, 2008. In its *Application*, OnWav 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

OnWav'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 . . .

* * *

(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. Michael Powell, President and CEO of OnWav, participated in the Hearing, adopted his pre-filed testimony and was subject to examination by the Hearing Officer. During the Hearing, Mr. Powell stated that OnWav services will be non facilities and facilities based. The facilities based portion will be effected

via WiMax technology, which has the ability to wirelessly transmit a call up to the last 30 miles. OnWav initially intends to deploy a network in Cookeville and later span out throughout the State, including rural areas. Mr. Powell affirmed that OnWav 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 OnWav's *Application* based upon the following findings of fact and conclusions of law:

I. OnWav's Qualifications

1. OnWav is a corporation organized under the laws of the State of Tennessee and was licensed to transact business in Tennessee by the Secretary of State on February 23, 2007.

2. The complete street address of the registered agent for OnWav, Mr. Michael Powell, is 1609 Fairway Drive, Cookeville, Tennessee 38501. The complete street address of the corporate office of OnWav is 1609 Fairway Drive, Cookeville, Tennessee 38501. The telephone number is (931) 544-7224.

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

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

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

II. Proposed Services

OnWav intends to offer a broad range of services through the utilization of its own facilities, resold facilities, and a combination of these provisioning methods. OnWav plans to offer basic access line service, Private Branch Exchange (“PBX”) and Direct Inward Dialing (“DID”) Services, E911 and 911 emergency services, Long Distance and International Calling, Internet Access, Optional Calling Features, Directory Assistance, Directory Services, as well as all services required by TRA Rule 1220-4-8-.04. OnWav expects to serve both business and residential customers, with the residential customers becoming a higher priority over time as OnWav reaches out to the most rural and deprived areas of the counties. OnWav’s initial line of local services will be comparable to that currently offered by the Incumbent Local Exchange Carriers (“ILECs”).

OnWav will have a limited license Class 5 Softswitch and will rely on the underlying carrier’s facilities for customer provisioning, routing and switching. Additionally, OnWav does not require customers to provide any special Customer Provided Equipment (“CPE”) for delivery of service. All OnWav equipment will be compatible with that of the ILECs. OnWav will deliver service to their customer’s premises in two ways: by using the current local loop of the ILECs, Unbundled Network Elements (“UNEs”), UNE-Platform (“UNE-P”) and UNE-Loop (“UNE-L”), and by using OnWav’s wireless network as a last mile connection or in place of the current wired loop which interconnects through OnWav’s Class 5 Softswitch with ILEC.

OnWav will lease local loops from the ILECs, route signals through its Class 5 Softswitch interconnected with the ILEC for access to the Public Switched Telephone Network (“PSTN”), and serve customers outside its citywide wireless network through the reselling of the ILEC’s UNEs. OnWav will serve customers inside its secure citywide wireless network by using

its WiMax Quality of Service (“QoS”) wireless network as the local loop to customer premises. These voice/data signals will travel from customer premises and back via special CPE, provided by OnWav, to its central office and into a Cisco 2801 Router. The Router will send the voice signal to the Class 5 Softswitch interconnected to the ILEC and on to the PSTN and send the data signals to the Internet link. Further, OnWav intends to use its WiMax wireless network as a last mile or local loop connection to provide service to customers whose physical locations are within its network’s reach capabilities. The customer’s voice/data signal will travel wirelessly back and forth through the secure OnWav Wireless Network and directly into and out of the Cisco 2801 Router and Class 5 Softswitch, which routes signals the interconnection to the ILEC and to the PSTN or Internet.¹

OnWav provided documentation indicating that it served notice of its application to provide competing local telecommunications services to all eighteen Incumbent Local Exchange Carriers 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 OnWav’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.

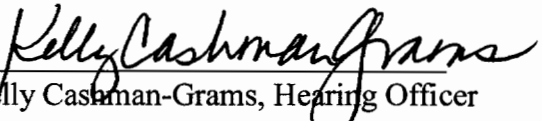
IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program

OnWav 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.

¹ See *Data Response*, p. 2 (May 5, 2008).

IT IS THEREFORE ORDERED THAT:

1. The *Application for Certificate to Provide Competing Local Telecommunications Services* filed by OnWay, 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