

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 29, 2008

IN RE:

PETITION OF PEERLESS NETWORK OF TENNESSEE, LLC  
FOR A CCN TO PROVIDE COMPETING LOCAL AND  
INTEREXCHANGE TELECOMMUNICATIONS SERVICES

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DOCKET NO.  
08-00084

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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 Certificate to Provide Competing Local and Interexchange Telecommunications Services* (the "*Application*") filed by Peerless Network of Tennessee, LLC ("Peerless-TN" or "Applicant") on May 20, 2008. In its *Application*, Peerless-TN seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing local and interexchange telecommunications services, including facilities-based and resold local exchange and long distance telecommunications services within the State of Tennessee.

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

Peerless-TN'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**

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on July 10, 2008. No persons sought intervention prior to or during the Hearing. On July 14, 2008, Peerless-TN filed a *Motion to Appear and Participate Telephonically at Hearing* requesting to participate in the Hearing by telephone. On July 15, 2008, the Hearing Officer granted Peerless-TN's request in an *Order Granting Electronic Participation in Hearing*.

At the Hearing held on July 24, 2008, Mr. John Barnicle, CEO of Peerless-TN, and its parent company, Peerless Network, LLC, participated in the Hearing telephonically, affirmed his pre-filed

testimony, and was subject to examination by the Hearing Officer. In accordance with the *Order Granting Electronic Participation in Hearing*, Mr. Daniel Meldazis, a licensed Notary Public in good standing in the state of Illinois, administered the testimonial oath to Mr. Barnicle and remained physically present with him throughout his examination and testimony. In addition, the Authority received a properly executed *Witness Certification and Affidavit* on July 25, 2008.

During his testimony, Mr. Barnicle stated that Peerless-TN plans to put a switch or a portion of a switch in one or more market cities within Tennessee as well as lease transport facilities from a variety of providers including Incumbent Local Exchange Carriers (“ILECs”) or other competitive carriers that currently serve Tennessee. Mr. Barnicle affirmed that Peerless-TN 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 conclusion of the presentation of its proof, the Hearing Officer granted Peerless-TN’s *Application* based upon the following findings of fact and conclusions of law:

**I. Peerless-TN’s Qualifications**

1. Peerless-TN is a limited liability company organized under the laws of the State of Tennessee and was licensed to transact business in Tennessee by the Secretary of State on April 5, 2006.

2. The complete street address of the registered agent for Peerless-TN, Joseph Martin, Jr., Esq., is 315 Deaderick Street, Suite 1100, Nashville TN 37238. The complete street address of the corporate office of Peerless-TN is 225 W. Washington Street, Suite 1285, Chicago, Illinois 60606. The telephone number is (312) 642-6286.

3. The *Application* and supporting documentary information existing in the record indicate that Peerless-TN has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee.

Specifically, Peerless TN's senior management team possesses sufficient business, technical, operational and regulatory experience.

4. Peerless-TN has the necessary capital and financial ability to provide the services it proposes to offer.

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

## **II. Proposed Services**

Peerless-TN expects to offer a broad variety of local exchange services to business customers as a reseller and/or facilities-based provider. Peerless-TN plans to offer basic access line service, optional calling features, directory assistance, directory services, and operator services, as well as all services required under Chapter 1220-4-8-.04(3)(b). Peerless-TN provided the Authority with documentation which reflects that it served notice of its application to provide competing local telecommunications services to all eighteen Incumbent Local Exchange Carriers in Tennessee on May 19, 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 Peerless-TN'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**

Peerless-TN 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 Peerless Network of Tennessee, 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