

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 29, 2009

IN RE:

APPLICATION OF METROPOLITAN TELECOMMUNICATIONS
OF TENNESSEE, INC. FOR AUTHORITY TO PROVIDE
COMPETING LOCAL EXCHANGE AND INTEREXCHANGE
SERVICE

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DOCKET NO.
09-00047

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 April 28, 2009 to consider the *Application of Metropolitan Telecommunications of Tennessee, Inc. for Authority to Provide Competing Local Exchange and Interexchange Service* (the “*Application*”) filed by Metropolitan Telecommunications of Tennessee, Inc. (“MetTel” or “Applicant”) on April 6, 2009. In its *Application*, MetTel seeks a Certificate of Public Convenience and Necessity (“CCN”) for authority to provide 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

MetTel’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 April 28, 2009 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 April 15, 2009. No persons sought intervention prior to or during the Hearing. Mr. Henry Walker, counsel for MetTel, appeared personally at the Hearing and facilitated the telephonic testimony of Mr. Sam Vogel, Chief Marketing Officer and Senior Vice President of Interconnection for MetTel.¹ Ms. May Chung, a licensed Notary Public in good standing in the state of New York, appeared telephonically with Mr. Vogel, administered the

¹ On April 20, 2009, MetTel filed a *Motion to Appear and Participate Telephonically at Hearing* requesting to participate in the Hearing by telephone. On April 22, 2009, the Hearing Officer granted MetTel's request in an *Order Granting Telephonic Participation in Hearing*.

testimonial oath to him, and pledged to remain physically present with him throughout his examination and testimony.²

Thereafter, Mr. Vogel participated in the Hearing, adopted the pre-filed testimony of Mr. David Aronow, President of MetTel, and was subject to examination by the Hearing Officer. During the Hearing, Mr. Vogel stated that MetTel provides resell services to the contiguous 48 states and Hawaii utilizing the facilities of existing Local Exchange Carriers (“LECs”) or other competitive carriers through negotiated interconnection and other commercial agreements. Further, Mr. Vogel described certain regulatory process improvements implemented recently by MetTel. Upon conclusion of the presentation of its proof, the Hearing Officer granted MetTel’s *Application* based upon the following findings of fact and conclusions of law:

I. MetTel’s Qualifications

1. MetTel 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 November 9, 2000.
2. The complete street address of the registered agent for MetTel, Corporation Service Company, is 2908 Poston Avenue, Nashville TN 37203. The complete street address of the corporate office of MetTel is 44 Wall Street, 6th Floor, New York, New York 10005. The telephone number is (212) 607-2000.
3. The *Application* and supporting documentary information existing in the record indicate that MetTel has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, MetTel’s senior management team possesses extensive business, technical, operational and regulatory experience.

² In granting approval for Mr. Vogel to appear telephonically, the Hearing Officer set out certain conditions, including requiring the personal appearance of counsel, a notary public to administer the testimonial oath and observe the witness during testimony, as well as, the filing of a witness certification and notary public affidavit. *See Order Granting Telephonic Participation in Hearing* (April 22, 2009). The required filings were made on April 29, 2009.

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

5. MetTel has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.³

II. Proposed Services

MetTel expects to offer local exchange service to local and business customers located in non-rural exchange carriers' service areas and interexchange services statewide.

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 MetTel'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.

³ Previously, MetTel was granted a CCN to provide telecommunications services in Tennessee in an Order dated March 31, 2006 in Docket No. 06-00014. On February 27, 2009, an *Order Revoking Authority to Provide Competing Local Exchange and Interexchange Telecommunications Services in Tennessee for Non-payment of Fees* was issued by the Authority. MetTel's petition for reconsideration of the revocation was denied by the Authority, and thereupon MetTel was directed to file a new application for certification to provide service. See, *In re: Petition of Metropolitan Telecommunications of Tennessee, Inc. for a CCN to Provide Competing Local Exchange and Interexchange Telecommunications Services in Tennessee*, Docket No. 06-00014.

During the Hearing on the new application filed in this docket, MetTel's corporate representative and witness, Mr. Vogel, explained the circumstances that led to MetTel's violation of Tenn. Code Ann. 65-4-301(a)(1) and subsequent revocation its CCN revocation. Further, Mr. Vogel described the various measures implemented by MetTel to ensure that it will maintain compliance with all regulatory mandates in the future, including: 1) the outsource of all compliance filings and fee payments to Helein and Marshlian, LLC (a.k.a., The CommLaw Group), 2) designation of a specific MetTel department to coordinate information between MetTel and The CommLaw Group, 3) development of a follow-up procedure to flag deadlines, 4) operation of a direct department hotline for regulatory authorities and designating Ms. May Chung as the primary regulatory contact person at MetTel. Additionally, MetTel is currently developing a payment tracking system that, once complete, will initiate, release, and confirm all regulatory payments to ensure remittance in a timely manner. See, Transcript of Proceedings, pp. 7-9 (April 28, 2009).

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

MetTel 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 of Metropolitan Telecommunications of Tennessee, Inc. for Authority to Provide Competing Local Exchange and Interexchange Service* filed by Metropolitan Telecommunications of Tennessee, 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