

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 5, 2009

IN RE:

APPLICATION OF DUKENET COMMUNICATIONS, LLC  
FOR A CERTIFICATE TO PROVIDE LOCAL EXCHANGE  
AND INTEREXCHANGE TELECOMMUNICATIONS  
SERVICES IN TENNESSEE

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DOCKET NO.  
09-00051

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ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY

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This matter came before Director Mary W. Freeman, Director Eddie Roberson, and Director Kenneth C. Hill of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a Hearing held on July 13, 2009, to consider the *Application for a Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by DukeNet Communications, LLC ("DukeNet" or "Applicant") on April 13, 2009. In its *Application*, DukeNet seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing local and interexchange telecommunications services in Tennessee.

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

DukeNet'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. 2008), 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 July 13, 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 July 1, 2009. No persons sought intervention prior to or during the Hearing. On July 7, 2009, DukeNet filed a *Motion to Appear and Participate Telephonically at Hearing* requesting permission for Tony Cockerham, Vice President of Sales and Operations for DukeNet to participate in the Hearing by telephone. On July 8, 2009, the Hearing Officer granted DukeNet's request in an *Order Granting Electronic Participation in Hearing*.

During the Hearing held on July 13, 2009, Mr. Tony Cockerham, Vice President of Sales and Customer Operations, participated in the Hearing telephonically, affirmed his pre-filed testimony, and was subject to examination by the panel. In accordance with the *Order Granting Electronic Participation in Hearing*, Mr. W. Edward Poe, Jr. a licensed Notary Public in good standing in the State of North Carolina, administered the testimonial oath to Mr. Cockerham and remained physically present with him throughout his examination and testimony. In addition, as required, the Authority received a properly executed *Witness Certification* and a *Notary Public Affidavit* on July 17, 2009. The Company was represented by Henry Walker, Esq., who appeared at the Hearing in person.

#### **I. DukeNet's Qualifications**

1. DukeNet 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 as of January 29, 2009.

2. The complete street address of the registered agent for DukeNet, CT Corporation System, is 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929. The complete street address of the corporate office of DukeNet is 400 South Tryon Street, Charlotte, North Carolina 28202-1904. The telephone number is (704) 382-8104.

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

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

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

## **II. Proposed Services**

DukeNet intends to offer local and long distance services as a competing local exchange carrier throughout Tennessee. DukeNet plans to begin offering its services in the Nashville and Knoxville areas and states that in the event it pursues opportunities to provide local services in areas served by local exchange telephone companies with fewer than 100,000 total access lines, it will first negotiate and execute interconnection agreements with those carriers. DukeNet does not plan to provide voice grade services or otherwise offer services to end users but rather will be a “carrier’s carrier” installing fiber to be leased by other carriers providing services to end users. DukeNet 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 April 13, 2009.

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

Upon a review of the *Application* and the record in this matter, the panel found that approval of DukeNet’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**

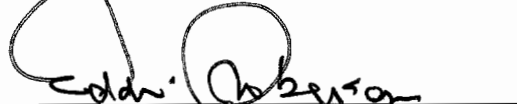
DukeNet has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority’s Rules.

**IT IS THEREFORE ORDERED THAT:**

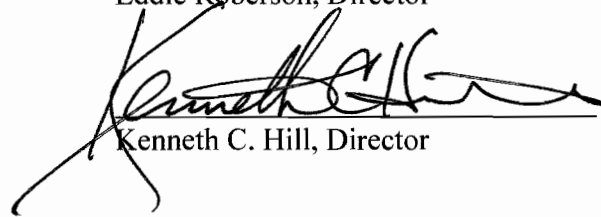
The *Application for a Certificate to Provide Competing Local Telecommunications Services* filed by DukeNet Communications, LLC is approved.



Mary W. Freeman, Director



Eddie Roberson, Director



Kenneth C. Hill, Director