

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 14, 2010

IN RE:)	
)	
APPLICATION OF MORRISTOWN UTILITIES)	DOCKET NO.
COMMISSION FOR A CCN TO PROVIDE)	10-00084
COMPETING TELECOMMUNICATIONS SERVICES)	

ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before Director Eddie Roberson, Director Kenneth C. Hill and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a Hearing held on July 26, 2010 to consider the *Application for a Certificate of Convenience and Necessity to Provide Competing Telecommunications Services* (the "*Application*") filed by Morristown Utilities Commission d/b/a MUS, Morristown Utility Systems, Morristown Utility Systems FiberNet and MUS FiberNet ("MUS" or "Applicant") on April 29, 2010. In its *Application*, MUS seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide telecommunications services throughout the State of Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

MUS' *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. 2009) and applicable sections of Tenn. Code Ann. § 7-52-401 *et. seq.* (2005). Tenn. Code Ann. § 65-4-201 (Supp. 2009) 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.

* * *

Tenn. Code Ann. § 7-52-401 provides, in pertinent part:

Every municipality operating an electric plant, whether pursuant to this chapter or any other public or private act or the provisions of the charter of the municipality, county or metropolitan government, has the power and is authorized, on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality, in compliance with title 65, chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. A municipality shall only be authorized to provide telephone, telegraph or telecommunications services through its board or supervisory body having responsibility for the municipality's electric plant. . . . Notwithstanding § 65-4-101(a)(2) or any other provision of this code or of any private act, to the extent that any municipality provides any of the services authorized by this section, such municipality shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, without limitation, rules or orders governing anti-competitive practices, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such municipality's provision of telephone, telegraph and communication services.

Tenn. Code Ann. § 7-52-402 provides:

A municipality providing any of the services authorized by § 7-52-401 shall not provide subsidies for such services. Notwithstanding that limitation, a municipality providing such services shall be authorized to: 1) Dedicate a reasonable portion of the electric plant to the provision of such services, the cost of which shall be allocated to such services for regulatory purposes; and 2) Lend funds, at a rate of interest not less than the highest rate then earned by the municipality on invested electric plant funds, to acquire, construct, and provide working capital for the system, plant, and equipment necessary to provide any of the services authorized under § 7-52-401; provided, that such interest costs shall be allocated to the cost of provisions as are required by the state director.

With respect to the applicability of other regulatory laws and rules to municipalities,

Tenn. Code Ann. § 7-52-403 provides:

(a) To the extent that it provides any of the services authorized by § 7-52-401, a municipality has all the powers, obligations and authority granted entities providing telecommunications services under applicable laws of the United States or the state of Tennessee. To the extent that such authority and powers do not conflict with the provisions of title 65, chapter 4 or 5, and any rules, regulations, or orders issued thereunder, a municipality providing any of the services authorized by § 7-52-401 has all the authority and powers with respect to such services as are enumerated in this chapter.

Additionally, Tenn. Code Ann. § 7-52-405 establishes the criteria for a municipality's allocation of the costs of providing its telecommunications services.

Finally, 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 26, 2010 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 16, 2010. No persons sought intervention prior to or during the Hearing.

During the Hearing held on July 26, 2010, Mr. Joseph S. Wigington, General Manager, and Mr. Clark Rucker, Assistant Manager and Chief Financial Officer, participated in the Hearing, affirmed their pre-filed testimony and were subject to examination by the panel. MUS was represented by Mark Smith, Esq.

I. MUS' Qualifications

1. MUS is a municipal utility system created by private act by the Tennessee General Assembly in 1901. MUS provides water, power, cable and Internet services within the municipal boundaries of the City of Morristown to approximately 14,500 customers and provides network access and connectivity to Norlight Communications.

2. The complete street address of MUS' principal place of business is 441 West Main Street, Morristown, Tennessee 37815. The telephone number is (423) 586-4121.

3. The *Application* and supporting information existing in the record indicate that MUS has the requisite technical and managerial ability to provide the applied for telecommunications services within the State of Tennessee.

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

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

II. Proposed Services

MUS will provide telephone and regulated telecommunications services through a separate business unit within MUS. The Telephone Business Unit will be operated in a manner that is financially distinct from the Electric Business Unit, the Water Business Unit and the Cable/Internet Business Unit of MUS.

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 MUS' *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

MUS 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.

V. Compliance With Additional Conditions

To ensure compliance with Tenn. Code Ann. § 7-52-402, which prohibits cross-subsidization among the divisions of MUS, the panel found that approval of the *Application* would be contingent upon MUS agreeing to comply with certain conditions. At the Hearing, MUS stipulated that it would agree to accept the following conditions:

(1) the Authority shall be given access to the Company's books, accounts, memoranda, contracts and records for all business units upon request of the Authority;

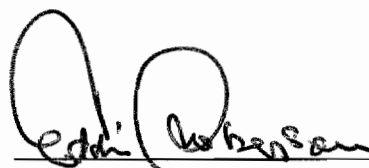
(2) MUS shall be required to file an annual report of its telecommunications operations, including an income statement and balance sheet, within ninety days after MUS' fiscal year end; and

(3) a third-party audit of MUS' telecommunications expenditures and overall operations should be conducted by an independent auditor chosen by MUS. The audit should include an examination of the reasonableness of MUS' cost allocations to the Telephone Business Unit, compliance with the Cost Allocation Manual, as well as any other direct or indirect transaction between MUS and the MUS Telephone Business Unit. The results of the audit shall be provided to the Authority within six months after the fiscal year-end annual report is issued. The audits should

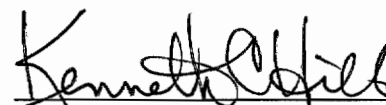
begin at the end of the first fiscal year-end after approval of the CCN and continue on an annual basis unless otherwise ordered by the Authority.

IT IS THEREFORE ORDERED THAT:

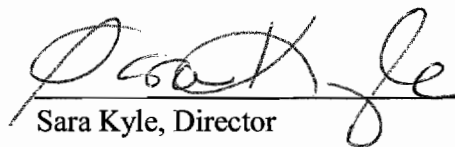
Morristown Utilities Commission's *Application for a Certificate of Convenience and Necessity to Provide Competing Telecommunications Services* is approved, contingent upon the conditions outlined in Section V above.



Eddie Roberson, Director



Kenneth C. Hill, Director



Sara Kyle, Director