

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 24, 2011

IN RE:

**APPLICATION OF WIMACTEL, INC. FOR A CCN TO
PROVIDE FACILITIES-BASED COMPETING LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES**

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**DOCKET NO.
10-00215**

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

This matter came before Chairman 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 11, 2011 to consider the *Application of WiMacTel, Inc. for a Certificate to Provide Facilities-Based Competing Local Exchange Telecommunications Services on a Facilities and Resold Basis and Long Distance on a Resold Basis* (the "*Application*") filed by WiMacTel, Inc. ("WiMacTel" or "Company") on November 10, 2010. In its *Application*, WiMacTel seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing local and long distance telecommunications services in Tennessee.

Legal Standard for Granting Certificate of Public Convenience and Necessity

WiMacTel'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. 2010), 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.

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 Hearing on the Merits

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, 2011. No persons sought intervention prior to or during the Hearing. On July 7, 2011, WiMacTel filed a *Motion to Appear and Participate Telephonically at Hearing*. On July 7, 2011, the Hearing Officer granted WiMacTel's motion in an *Order Granting Telephonic Appearance in Hearing*.

During the Hearing held on July 11, 2011, Mr. Gary Joseph, Manager of Telecom Operations, who is responsible for all aspects of WiMacTel operations, participated in the Hearing telephonically. Mr. Joseph affirmed his pre-filed testimony, filed on July 8, 2011, and was subject to examination by the panel. In accordance with the *Order Granting Telephonic Appearance in Hearing*, Sharon Gay Jones, a licensed Notary Public in good standing in the State of Arizona, Maricopa County, administered the testimonial oath and remained present with Mr. Joseph throughout his examination and testimony. In addition, as required, the Authority received a properly executed *Witness Certification* and a *Notary Public Affidavit* on July 14, 2011. Mr. K. David Waddell, Esq., who appeared personally at the Hearing, represented the Company.

I. WiMacTel's Qualifications

1. WiMacTel is a corporation organized under the laws of the State of Delaware authorized to transact business in Tennessee by the Secretary of State as of June 3, 2010.

2. The registered agent for WiMacTel is National Registered Agents, Inc., located at 2300 Hillsboro Road, Suite 305, Tennessee 37212. WiMacTel's corporate office and principal place of business is located at 1882 Porter Lake Drive, Suite 101, Sarasota, FL 34240. The telephone number is (888) 476-0881.

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

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

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

II. Proposed Services

WiMacTel intends to offer voice grade local exchange service to business customers in areas currently served by AT&T Tennessee and interexchange toll services throughout the State of Tennessee. The Company is not proposing at this time to build a network or deploy switches, but will utilize network and switching provided by AT&T Tennessee pursuant to an interconnection agreement between AT&T Tennessee and WiMacTel. WiMacTel has indicated that it does not intend to offer service in areas served by any incumbent local exchange telephone company with fewer than 100,000 total access lines.

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 WiMacTel'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

WiMacTel 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 of WiMacTel, Inc. for a Certificate to Provide Facilities-Based Competing Local Exchange Telecommunications Services on a Facilities and Resold Basis and Long Distance on a Resold Basis* is approved.


Eddie Roberson, Chairman
Kenneth C. Hill, Director
Sara Kyle, Director