

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 19, 2011

IN RE:

APPLICATION OF ZAYO ENTERPRISE NETWORKS,  
LLC FOR A CERTIFICATE OF CONVENIENCE AND  
NECESSITY

)  
)  
)  
)  
)

DOCKET NO.  
11-00116

---

ORDER GRANTING TELEPHONIC PARTICIPATION IN HEARING

---

This matter came before the Hearing Officer upon the *Motion of Zayo Enterprise Networks, LLC to Permit Scott Sawyer to Appear Telephonically at the Hearing on the Merits ("Motion for Telephonic Participation")* filed on behalf of Zayo Enterprise Networks, LLC ("Petitioner") on August 18, 2011. In its *Motion for Telephonic Participation*, Petitioner requests permission for its witness, Scott Sawyer, to participate telephonically in the Hearing on its *Petition*, scheduled for hearing before the TRA panel on August 22, 2011 at 1:00 p.m. CST.

Under the Tennessee Administrative Procedures Act, decisions involving telephone participation in a hearing are within the hearing officer's discretion:

(c) In the discretion of the administrative judge or hearing officer and agency members and by agreement of the parties, all or part of the hearing may be conducted by telephone, television or other electronic means, if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceedings while taking place.<sup>1</sup>

In support of its request for telephonic participation, Petitioner asserts that its request is made in good faith and for reasons of economic efficiency. As shown in the record, the witness, Mr. Sawyer, resides outside of the State of Tennessee. Therefore, in accord with the above-

---

<sup>1</sup> Tenn. Code Ann § 4-5-312(c) (2004).

referenced statute, the Hearing Officer grants Petitioner's *Motion for Telephonic Participation*, subject to the following conditions:

1. Petitioner shall have its attorney appear personally at the Hearing to present the Petitioner's telephonic witnesses and to facilitate the questioning of each witness. Prior to the hearing, Petitioner's attorney must be licensed to practice law in Tennessee or have obtained permission from the Authority to appear *pro hac vice*.<sup>2</sup>

2. Petitioner is solely responsible for and required to secure a properly licensed Notary Public in good standing in the State or jurisdiction where the witness is giving telephonic testimony. The Notary Public will be in the same physical location and appear with any company representative or witness providing testimony at the Hearing by telephone.

3. It is necessary that the Notary Public retained by Petitioner be proficient and ready to administer the Testimonial Oath during the Hearing. The Notary Public is further required to remain in the presence of the witness at all times during the testimony and until such time as the witness is excused from examination by the Authority panel or Hearing Officer.

4. After the Hearing, the Notary Public will prepare and sign an Affidavit, bearing the official seal of the signing Notary Public, affirming, (1) the proven identity of the witness, (2) the fact that the Notary Public swore such person, and (3) that the testimony given by the sworn witness has complied with the highest ethical and legal standards, as observed by the Notary Public. In addition, the Witness is required to sign a conforming Witness Certification. (As a courtesy, Exhibit A contains sample forms of the *Witness Certification and Notary Public Affidavit*.)

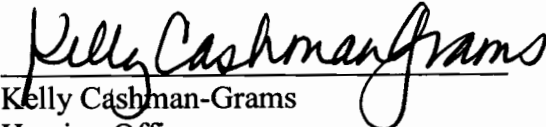
5. The original Witness Certification and Notary Public Affidavit must be post-

marked within five (5) days of the Hearing and received by the Hearing Officer via postage-paid U.S. Mail. Should the required affirming documents are not received by the Hearing Officer as described above, the testimony of the witness may be struck from the record and constitute sufficient cause for denial of the application.

**IT IS THEREFORE ORDERED THAT:**

1. Subject to the conditions set forth in this Order, Zayo Enterprise Networks, LLC's witness, Mr. Scott Sawyer, may appear and participate telephonically in the Hearing noticed for August 22, 2011 at 1:00 p.m. CST.

2. To avoid disruption of other matters scheduled for the consideration of the Authority, persons authorized to participate by telephone shall call (615) 532-7746 at least **ten minutes before the start time of the Hearing**. The Hearing will begin promptly.

  
Kelly Cashman-Grams  
Hearing Officer

cc: Interested Parties  
Original in Docket File

---

<sup>2</sup> See, Tenn R. and Regs. 1220-1-2-.04(7), which states, "Out of state counsel shall comply with T.C.A. [Tenn. Code Ann.] 23-3-103(a) and Tennessee Supreme Court Rule 19, except the affidavit referred to in the latter rule shall be filed with the Chair of the Authority."

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:**

**(Case Style)**

)  
)  
)  
)  
)  
)

**Docket No. 00-00000**

---

**WITNESS CERTIFICATION**

---

Affiant, duly sworn according to law, states as follows:

I, \_\_\_\_\_, attest and certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I gave sworn testimony by telephonic means at a Hearing held before the Tennessee Regulatory Authority. I have read the Affidavit of the Notary Public, Mr. /Mrs. \_\_\_\_\_, who administered the Testimonial Oath to me and witnessed my testimony, and I further acknowledge and affirm that the testimony I provided compiled with the highest ethical and legal standards.

**FURTHER WITNESS SAITH NOT.**

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

---

**SIGNATURE OF WITNESS**

---

**NAME OF WITNESS (Printed)**

**EXHIBIT A**

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:**

**(Case Style)**

)  
)  
)  
)  
)  
)

**Docket No. 00-00000**

---

**NOTARY PUBLIC AFFIDAVIT**

---

Affiant, duly sworn according to law, states as follows:

1. I, \_\_\_\_\_, am a Notary Public in good standing in the State of \_\_\_\_\_, County of \_\_\_\_\_. This Affidavit is made of my own personal knowledge.

2. My business address and telephone phone where I may be contacted is:

\_\_\_\_\_

3. To provide sworn testimony by telephone before the Tennessee Regulatory Authority, \_\_\_\_\_ ("Witness") appeared personally before me and provided \_\_\_\_\_ (type of identification), which I verified, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

3. During the Hearing, I properly administered the testimonial oath and swearing of the Witness before he/she provided testimony via telephone before the Tennessee Regulatory Authority.

4. I remained in the presence of the Witness at all times during the testimony and until such Witness was excused from examination by the Authority panel or Hearing Officer.

5. The testimony given by the Witness was in accordance with the highest ethical and legal standards.

**FURTHER AFFIANT SAITH NOT.**

WITNESS my hand, at office, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**(OFFICIAL SEAL)**

\_\_\_\_\_  
**NOTARY PUBLIC**

\_\_\_\_\_  
**NOTARY PUBLIC (Printed)**

My Commission Expires:

**SAMPLE**