

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 27, 2013

IN RE:

APPLICATION OF MCGRAW COMMUNICATIONS, INC.  
FOR AUTHORITY TO PROVIDE COMPETING LOCAL  
EXCHANGE AND INTEREXCHANGE SERVICE

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)  
) DOCKET NO.  
) 12-00134  
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INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on February 26, 2013 to consider the *Application of McGraw Communications, Inc. for Authority to Provide Competing Local Exchange and Interexchange Service* (the "*Application*") filed by McGraw Communications Inc. ("McGraw" or "Applicant") on November 5, 2012. In its *Application*, McGraw seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing local exchange and interexchange telecommunications services in Tennessee.

**LEGAL STANDARD**

McGraw'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. 2012), 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 . . .

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(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.

#### **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 February 13, 2013. No persons sought intervention prior to or during the Hearing. Mr. H. LaDon Baltimore, local counsel for McGraw, appeared personally at the Hearing and facilitated the telephonic testimony of Mr. Michael O'Neill, Director for McGraw Communications Inc.<sup>1</sup> Ms. Sadia Mendez, a licensed Notary Public in good standing in the state of New York, appeared telephonically with Mr. O'Neill, administered the testimonial oath

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<sup>1</sup> On February 15, 2013, McGraw filed a *Motion to Appear and Participate Telephonically at Hearing* requesting to participate in the Hearing by telephone. On February 21, 2013, the Hearing Officer granted McGraw's request in an *Order Granting Telephonic Participation in Hearing*.

to him, and pledged to remain physically present with him throughout his examination and testimony.<sup>2</sup> Thereafter, Mr. O'Neill participated in the Hearing, adopted the pre-filed testimony of Mr. Francis X. Ahearn, CEO of McGraw Communications Inc.,<sup>3</sup> testified concerning the *Application*, and was subject to examination by the Hearing Officer.

## **I. MCGRAW'S QUALIFICATIONS**

1. McGraw is a corporation organized under the laws of the State of New York and was licensed to transact business in Tennessee by the Secretary of State on October 2, 2003.

2. The complete street address of the registered agent for McGraw Communications, Inc., is 216 Centerview Drive, Suite 317, Brentwood, Tennessee 37027. The complete street address of the corporate office of McGraw Communications Inc. is 521 Fifth Avenue, 14<sup>th</sup> Floor, New York, New York 10175. The telephone number is (212) 849-2223.

3. The *Application* and information in the record indicate that McGraw has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, McGraw's senior management team possesses extensive business, technical, operational and regulatory experience.

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

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

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<sup>2</sup> In granting approval for Mr. Ahearn 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* (February 21, 2013). The required filings were made on February 27, 2013.

<sup>3</sup> Noting one correction to the pre-filed testimony filed by Mr. Ahearn, Mr. O'Neill stated that, since the filing of the *Application*, McGraw had moved its offices to 521 Fifth Avenue, 14<sup>th</sup> Floor, New York, New York 10175.

## **II. PROPOSED SERVICES**

McGraw expects to offer local exchange service to customers located in non-rural areas of Tennessee, and interexchange services statewide. McGraw further intends to offer switched local exchange services, including basic service, trunks, carrier access and other switched local services that currently exist or will exist in the future, non-switched local services (e.g. private line), centrex and or centrex-like services, digital subscriber lines, ISDN and other high capacity services. McGraw's interexchange offerings will be both switched and dedicated services such as 1+ AND 101XXXX outbound dialing, 800/888 toll free-free inbound dialing and data services. The Applicant has no plans to install facilities in the state of Tennessee and proposes to offer services throughout Tennessee in non-rural areas, specifically targeting Nashville, Knoxville, Memphis and Chattanooga.

## **III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

McGraw's *Application* and its proposed services 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**

McGraw 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 McGraw Communications, Inc. for Authority to Provide Competing Local Exchange and Interexchange Service* filed by McGraw Communications 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