

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 6, 2013

IN RE:

APPLICATION OF TIME WARNER CABLE BUSINESS,)	
LLC D/B/A TIME WARNER CABLE FOR A CERTIFICATE)	DOCKET NO.
OF PUBLIC CONVENIENCE AND NECESSITY TO)	13-00087
PROVIDE COMPETITIVE INTEREXCHANGE)	
TELECOMMUNICATIONS SERVICES IN TENNESSEE)	

INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on November 4, 2013 to consider the *Application for Certificate of Public Convenience and Necessity* (the "*Application*") filed by Time Warner Cable Business, LLC, d/b/a Time Warner Cable ("Time Warner Cable" or "Applicant") on June 12, 2013. In its *Application*, Time Warner Cable seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing facilities-based interexchange telecommunications services in Tennessee.

LEGAL STANDARD

Time Warner Cable'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. 2013), 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.

HEARING ON THE MERITS

Pursuant to Tenn. Code Ann. § 65-4-201, *et seq.*, public notice of the Hearing in this matter was issued by the Hearing Officer on October 17, 2013. No persons sought intervention prior to or during the Hearing. Mr. Henry Walker, local counsel for Time Warner Cable, appeared personally at the Hearing and facilitated the telephone testimony of Mr. Vincent Paladini, Senior Regulatory Counsel for Time Warner Cable.¹ Ms. Donna Moore, a licensed Notary Public in good standing in

¹ On October 9, 2013, Time Warner Cable filed a *Motion to Allow Witness to Participate by Telephone* requesting to permit Time Warner Cable to present its witness via telephone during the hearing. On October 18, 2013, the

the Commonwealth of Virginia, County of Fairfax, appeared telephonically with Mr. Paladini, administered the testimonial oath to him, and pledged to remain physically present with him throughout his examination and testimony.² Thereafter, Mr. Paladini participated in the Hearing, ratified his pre-filed testimony, testified concerning the *Application*, and was subject to examination by the Hearing Officer.

I. TIME WARNER CABLE'S QUALIFICATIONS

1. Time Warner Cable is a publicly-traded company incorporated in the state of Delaware on January 16, 2013, and was licensed by the Secretary of State to transact business in Tennessee on January 18, 2013.

2. The complete street address of the registered agent for Time Warner Cable is CT Corporation System, 800 S Gay Street, Suite 2021, Knoxville, Tennessee 37929. The complete street address of Time Warner Cable's corporate office is 60 Columbus Circle, New York, NY 10023. The telephone number is (212) 364-8200.

3. The *Application* and information in the record demonstrate that Time Warner Cable has the requisite technical and managerial ability to provide the services for which it has applied within the State of Tennessee. Specifically, Time Warner Cable's senior management team possesses extensive business, technical, operational and regulatory experience.

4. Time Warner Cable has also demonstrated that it has the necessary capital and financial ability to provide the services it proposes to offer.

Hearing Officer granted Time Warner Cable's request in an *Order Granting Motion to Allow Witness to Participate by Telephone*.

² In granting approval for Mr. Paladini 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 Motion to Allow Witness to Participate by Telephone* (October 18, 2013). The required filings were made on November 5, 2013.

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

II. PROPOSED SERVICES

Time Warner Cable intends to resell High Capacity Transmission Services to commercial customers throughout the State of Tennessee. High Capacity Transmission Services provide non-voice, point-to-point, point-to-multipoint, and multipoint-to-multipoint dedicated connections between one or more customer-designated locations and/or Time Warner Cable.³ The service may utilize Ethernet interfaces, optical fiber and/or coaxial cable facilities, is scalable from 1 Mbps to 10 Gbps, and will be designed and provisioned on an individual case basis pursuant to contracts with customers. All requesting customers will have nondiscriminatory access to ICB services and facilities at nondiscriminatory rates, terms and conditions.⁴

In addition, Time Warner Cable intends to provide services by reselling the existing hybrid fiber coaxial and fiber optic network facilities of its affiliates and of its ultimate corporate parent, Time Warner Cable Inc. and by leasing and constructing additional network facilities on an as-needed basis.⁵ The Applicant does not require customer deposits and will not be conducting any telemarketing in Tennessee.⁶

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Time Warner's *Application* and its proposed services would further the goals of the Tennessee General Assembly and benefit of the present and future public convenience by increasing competition in the telecommunications services markets in the State and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

³ *Application*, pp. 4-5 (June 12, 2013).

⁴ *Id.* at 5.

⁵ *Id.*

⁶ *Id.* at 6.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN AND BUSINESS ASSISTANCE PROGRAM

Time Warner 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 for Certificate of Public Convenience and Necessity* filed by Time Warner Cable Business, LLC, d/b/a Time Warner Cable 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, unless a petition requesting reconsideration or an appeal of this Order is filed prior to the expiration of the fifteen-day period noted above.



Kelly Cashman-Grams, Hearing Officer