

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

August 30, 1995

**IN RE: APPLICATION OF ATS OF TENNESSEE, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE INTRASTATE PRIVATE LINE AND
TELECOMMUNICATIONS ACCESS SERVICE WITHIN THE
STATE OF TENNESSEE**

Docket No. 95-02763

INITIAL ORDER

This matter is before the Tennessee Public Service Commission (the "Commission") upon the application of ATS of Tennessee, LLC (the "Applicant" or "ATS") for a certificate of convenience and necessity, pursuant to T.C.A. § 65-4-201, as set forth in the above caption.

Notice of the Application was served upon incumbent local exchange carriers with 100,000 or more access lines and other interested parties.

The matter was heard August 22, 1995, in Nashville, Tennessee, before Ralph B. Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

G. THOMAS MCPHERSON, Attorney at Law, 6000 Poplar Avenue #401, Memphis, TN 38119, appearing on behalf of the Applicant.

CHARLES L. HOWORTH, JR., General Counsel, South Central Bell Telephone Company, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300, appearing on behalf of his company.

T.G. PAPPAS, Attorney at Law, 2700 First American Center, Nashville, TN 37238, appearing on behalf of Tennessee Telephone Company.

JEANNE MORAN, General Utility Counsel, Tennessee Public Service Commission, 460 James Robertson Parkway, Nashville, Tennessee 37243-0505, appearing on behalf of the Commission Staff.

BACKGROUND AND PRELIMINARY MATTERS

On July 17, 1995, ATS, a Tennessee limited liability company filed an application with the Tennessee Public Service Commission seeking a certificate of public convenience and necessity pursuant to T.C.A. § 65-4-201 to provide intrastate private line and telecommunications services as a non-dominant provider to the public within Tennessee as a Competing Telecommunications Service Provider. In its Application, ATS avers it will offer a complete array of such telecommunication services as would be associated with a full service local exchange telephone company, including, but not limited to, switched local exchange services, access services, private lines, interLATA and intraLATA toll services, paging and enhanced services to businesses and individuals within Tennessee.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In evaluating the evidence of record and in making findings of fact and conclusions of law, the criteria for granting certificates to Competing Telecommunications Service Providers were considered as follows:

T.C.A. § 65-4-201(c) and (d) provide:

- (c) After notice to the Incumbent Local Exchange Telephone Company and other interested parties and following a hearing, the Commission

shall grant a certificate of convenience and necessity to a Competing Telecommunications Service Provider if after examining the evidence presented, the Commission finds:

- (i) The applicant has demonstrated that it will adhere to all applicable Commission policies, rules and orders; and
 - (ii) The applicant possesses the sufficient managerial, financial and technical abilities to provide the applied for services.
- (d) Subsection (c) shall not be applicable to areas served by an Incumbent Local Exchange Telephone Company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a Competing Telecommunications Service Provider or unless such incumbent Local Exchange Telephone Company applies for a certificate to provide telecommunications services in an area outside its service area existing on the effective date of this act.

Section 16 of Chapter 408 of the Public Acts of 1995 provides inter alia that:

Competing Telecommunications Service Providers shall file such [a small and minority owned telecommunications business participation plan] with their application for a certificate. Such plan shall contain the applicant's plan for purchasing goods and services from small and minority telecommunication business and information on programs, if any, to provide technical assistance to such businesses.

Robert M. Chance, Manager of ATS and Vice President of ATS Telephone & Data Systems, Inc. testified on behalf of the Applicant in support of the application. Mr.

Chance was the only witness to testify at the proceedings. Moreover, no party opposed the Application.

Mr. Chance described the ownership and relationship of ATS and ATS Telephone & Data System, Inc. and affirmed that ATS intends to adhere to all applicable Commission policies, rules, and orders.

Mr. Chance testified that ATS seeks authority to operate as a provider of telecommunication services including private line, access and basic local exchange services within Tennessee as a non-dominant carrier. He stated that ATS would provide the services either through the use of its facilities or through the resale of other common carriers.

Mr. Chance testified that ATS is a limited liability company affiliated with ATS Telephone & Data Systems, Inc. ATS Telephone & Data Systems, Inc. will provide the necessary financial resources for the construction of facilities and the operations of the Applicant. He testified relative to the ATS Telephone & Data Systems, Inc. balance sheet for the year ended December 31, 1994. He testified that Applicant has sufficient financial resources to provide the services it seeks to offer in Tennessee.

Mr. Chance testified that the Applicant also has the managerial and technical capabilities to provide the proposed telecommunication services, including basic local exchange service. ATS currently has four (4) employees, but ATS Telephone & Data Systems, Inc. has approximately Three Hundred (300) employees, most of whom have extensive telecommunications experience, who are available to provide expertise to the

Applicant for its Tennessee operations. The resumes of the managerial and technical staff that will be located in Tennessee were submitted as exhibits to the application. Mr. David C. Perdue, Chief Manager of ATS and Chairman and Chief Executive Officer of ATS Telephone & Data Systems, Inc., and who will have direct responsibility for Tennessee operations, has worked in the telecommunications industry for twenty-six (26) years.

Applicant filed a small and minority owned telecommunications business participation plan with its Application. Mr. Chance affirmed the commitment of ATS to its plan to participate in the small and minority telecommunications business assistance program as set forth in Section 16 of Chapter 408 of the Public Acts of 1995 and cited examples of its proactive dedication to such programs.

Applicant also submitted evidence that it served its Application upon the incumbent local exchange telephone companies operating in Tennessee and upon other interested parties, as provided to the Applicant from the Commission's records.

WHEREFORE, based upon the evidence of record, including the testimony of Robert M. Chance and the Application and all of the exhibits, I find that the Applicant has demonstrated it will adhere to applicable Commission policies, rules and orders; and that Applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services. Furthermore, I find Applicant has met the applicable statutory criteria set forth in Chapter 408 of the Public Acts of 1995 and should be granted a certificate of convenience and necessity to operate as a Competing


Telecommunication Service Provider on a state-wide basis, except in those areas served by telephone cooperatives and incumbent local telephone companies with fewer than 100,000 total access lines except in accordance with T.C.A. § 65-4-201(d).

IT IS THEREFORE ORDERED:

1. That the application of ATS of Tennessee, LLC for a statewide Certificate of Convenience and Necessity to operate as a Competing Telecommunications Service Provider offering telecommunication services including but not limited to private line, toll, access, enhanced and local exchange services pursuant to applicable Commission orders and rules is hereby **granted**;

2. That ATS may not provide service to customers served by an incumbent local exchange telephone company with less than 100,000 total access lines or by a telephone cooperative except in accordance with T.C.A. § 65-4-201 (d); and

3. That ATS may commence service under its certificate and franchise when it has filed proper tariffs for services to be offered and such other information required by the Tennessee Public Service Commission.


RALPH B. CHRISTIAN, II
ADMINISTRATIVE JUDGE