

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

August 30, 1995

**IN RE: APPLICATION OF BROOKS FIBER COMMUNICATIONS OF
TENNESSEE, INC. FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE
TELECOMMUNICATIONS SERVICES.**

Docket No. 95-02764

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the application of Brooks Fiber Communications of Tennessee, Inc. ("Brooks") for a certificate of convenience and necessity to provide telecommunications services to Tennessee as set forth in the above caption. Brooks files this application as a Competing Telecommunications Service Provider pursuant to Section 7 of Chapter 408 of the Public Acts of 1995, T.C.A. § 65-4-201(c). In accordance with the limitations described in T.C.A. § 65-4-201(d), Brooks presently seeks to provide intrastate service only to customers located in territory served by an incumbent local exchange telephone company with 100,000 or more total access lines. Notice of this application was provided to those carriers and to other interested parties. Brooks does not seek to provide service in those areas served by an incumbent local exchange carrier with less than 100,000 total access lines or by a telephone cooperative. Brooks has also requested in this proceeding that the Commission approve, pursuant to T.C.A. § 65-4-107, a franchise issued to Brooks by the City of Knoxville.

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:

HENRY WALKER, Attorney at Law, 414 Union Street, Suite 1600, Nashville, TN 37219, 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 South Central Bell Telephone Company.

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

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

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

Charles P. Johnson, Vice President of the Central Division, Brooks Fiber Properties, Inc. ("Brooks Fiber"), Applicant's parent company, testified in support of the application and in favor of approval of the Knoxville franchise. No other witnesses testified. No party opposed the application or objected to approval of the franchise.

Based upon the application, the franchise, the testimony and exhibits presented at the hearing and the entire record of this proceeding, I find that the application should be granted and the franchise approved. In support of those decisions, I hereby make the following findings of fact and conclusions of law:

1. Brooks seeks authority to offer all legally allowed telecommunications services including, but not limited to, such services as would normally be provided by an incumbent local exchange telephone company such as dedicated and switched access service, private line service, local dial tone, toll service, and enhanced services. Brooks seeks authority to provide these services on a statewide basis, including both interLATA and intraLATA, interexchange and intraexchange traffic. Brooks filed as an exhibit a demonstration tariff illustrating some of the kinds of service the company will offer in Tennessee. As Mr. Johnson testified, it is not possible to anticipate all the types of services and technologies which may become available in the future, but Brooks intends to offer those new technologies and services to its customers and is therefore requesting authority to offer the broadest array of telecommunications services provided by law.

2. Brooks intends to provide service to customers located throughout Tennessee except in those areas served by an incumbent local exchange company with fewer than 100,000 access lines or by a telephone cooperative.¹

3. Brooks is a wholly-owned subsidiary of Brooks Fiber Properties, Inc., which, through its operating subsidiaries, currently provides telecommunications service in eight cities in six states and is presently constructing networks in four additional cities. According to the Applicant's financial statements, Brooks Fiber today owns more than \$34 million in

¹ Under the terms of Chapter 408, the Commission may authorize a Competing Telecommunications Service Provider, such as Brooks, to operate in areas served by an incumbent local exchange carrier with less than 100,000 total access lines only if the incumbent carrier either voluntarily enters into an interconnection agreement with a competing provider or the incumbent carrier applies to the Commission to provide service outside the incumbent's service area. The Commission has recently ruled that, should either of these circumstances arise a Competing Telecommunications Service Provider with a statewide certificate may provide service in the newly opened area after filing an amended tariff and providing notice to the incumbent carrier in that area.

telecommunications assets. Mr. Johnson testified that Brooks has recently raised more than \$110 million in equity capital for additional communication investments. According to the exhibits attached to the application, the company has considerable expertise in the design, operation and construction of telecommunications networks. The officers responsible for the Brooks' Tennessee operations have extensive managerial and technical experience with which to execute Brooks' business plan.

Based upon these facts as described in the Company's application and in the testimony and exhibits of Mr. Johnson, I find that Brooks possesses sufficient managerial, financial, and technical abilities to provide the telecommunications services it proposes to offer and therefore meets the statutory criteria for the award of operating authority as a Competing Telecommunications Service Provider. See T.C.A. § 65-4-201(c).

4. Mr. Johnson testified that the applicant will adhere to all applicable Commission policies, rules, and orders. The following individual is responsible for Tennessee operations:

Carl Naes
800 South Gay Street
Suite 1800
Knoxville, Tennessee 37924
(615) 521-9988

5. In accordance with Section 16 of Chapter 408, Brooks has filed a small and minority-owned telecommunications businesses participation plan. The plan, attached to the company's application, fulfills the statutory requirements of Section 16. Mr. Johnson testified that Brooks is committed to implementation of the plan.

6. Brooks will keep its books in accordance with Generally Accepted Accounting Principles (GAAP).

7. Brooks has received a franchise from the City of Knoxville and submitted the franchise to the Commission for approval pursuant to T.C.A. § 65-4-107. Since the franchise was issued pursuant to an ordinance passed after the effective date of Chapter 408, the franchise does not purport to authorize Brooks to offer service in Knoxville except pursuant to a certificate issued by this Commission. No party objects to approval of the franchise which addresses the construction, operation, and maintenance of the franchise's telecommunication network within the City.

8. Approval of this application will serve the public interest by creating greater competition in the intrastate telecommunications marketplace. As Mr. Johnson testified, Brooks anticipates that its proposed services will provide its users with better quality services and enhanced features and will increase consumer choice through innovative, diversified, and reliable service offerings.

In particular, the public will benefit both directly, through the use of the competitive telecommunications services to be offered by Brooks, and indirectly because the presence of Brooks in this market should increase the incentives for other telecommunications services providers — including the incumbent local exchange carrier — to operate more efficiently, offer more innovative services, reduce prices, and improve the quality of service. This result will, in turn, further stimulate economic development in Tennessee.

Granting the instant application will also further the public interest by expanding the availability of technologically advanced telecommunications facilities with features such as security, survivability, and redundancy. The Brooks network will also provide Tennessee customers with the option of selecting from a wide range of innovative, customized services designed to meet specific customer needs. Brooks' entry into the intrastate market will therefore enhance telecommunications infrastructure in Tennessee.

9. Based upon the foregoing findings and conclusions, I find that the public convenience and necessity will be served by the issuance of a certificate to Brooks as the company has requested. I further find that the franchise issued to Brooks by the City of Knoxville should be approved based upon the criteria described in T.C.A. § 65-4-107.

IT IS THEREFORE ORDERED:


1. That the application of Brooks Fiber Communications of Tennessee, Inc., for a statewide certificate of convenience and necessity as a Competing Telecommunications Service Provider, pursuant to Section 7 of Chapter 408 of the Public Acts of 1995, T.C.A. § 65-4-201(c), is hereby **granted**;

2. That Brooks is hereby authorized to offer all of the services which may be provided by a Competing Telecommunications Service Provider including, but not limited to the following services: toll, local exchange, access, private line, paging, and enhanced services pursuant to applicable Commission orders and rules;

3. That Brooks 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), or as authorized by federal law, or otherwise authorized by the Public Service Commission;

4. That before providing service pursuant to this certificate, Brooks shall file tariffs describing the areas which Brooks proposes to serve, the services which the company proposes to offer, and such other information as the Commission may require; and

5. That the franchise issued to Brooks Fiber Communications of Tennessee, Inc., by the City of Knoxville is hereby approved.



RALPH B. CHRISTIAN, II
ADMINISTRATIVE JUDGE

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

August 30, 1995

IN RE: **APPLICATION OF BROOKS FIBER COMMUNICATIONS OF
TENNESSEE, INC., FOR A CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO PROVIDE INTRASTATE TELECOMMUNICATIONS
SERVICES**

DOCKET NO. 95-02764

ORDER

This matter is before the Tennessee Public Service Commission upon its own motion.

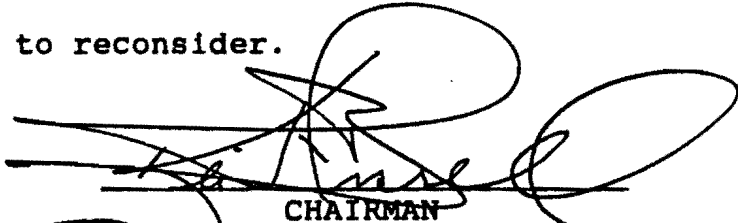

Having reviewed the Initial Order in the above captioned matter on August 30, 1995, the Commission, pursuant to T.C.A. Section 4-5-315(b), hereby notifies all parties that it will review all issues raised in the record of this proceeding before the Administrative Judge.


Any party may note an exception to the Initial Order by filing a brief with the Commission within zero days of the date of this order. Reply briefs may also be filed within zero days after filing exceptions. Any party may request oral argument on the issues raised in the briefs.

Requests for extensions of time within which to file briefs must be made in writing to the Executive Director of this Commission and accompanied by a proposed order to be signed by the Chairman of this Commission. The request must indicate that


copies of the request and proposed order have been served on all parties.

The Commission decision to review the Initial Order does not affect any party's right to petition the Administrative Judge to reconsider the Initial Order pursuant to T.C.A. 4-5-317. Should such a petition be filed, the time limits set forth in this Order for the submission for exceptions and replies will be suspended and will begin to run ab initio, from the date of the final order disposition of the petition to reconsider.


CHAIRMAN

Commissioner


Commissioner

ATTEST TO:


Paul Allen
Executive Director