BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 6, 2004

IN RE:	)	
	)	
APPLICATION OF CITYNET TENNESSEE, LLC	)	**DOCKET NO.**
FOR A CERTIFICATE OF PUBLIC CONVENIENCE	)	**03-00469**
AND NECESSITY TO PROVIDE COMPETING	)	
LOCAL TELECOMMUNICATIONS SERVICES,	)	
INCLUDING EXCHANGE ACCESS SERVICES,	)	
WITHIN THE STATE OF 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 February 3, 2004, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by Citynet Tennessee, LLC ("Citynet") on August 11, 2003. The Application requests the Authority to grant a certificate of public convenience and necessity to provide competing local telecommunications services, including exchange access telecommunications services, in Tennessee

Legal Standard for Granting Certificate of Public Convenience and Necessity

Citynet's *Application* was made pursuant to, and was considered in light of, the criteria for granting a Certificate of Public Convenience and Necessity ("CCN") as set forth in Tenn Code Ann § 65-4-201, 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.

* * *

(d) Subsection (c) is not 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 June 6, 1995 [1]

---

[1] Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U S C § 253(d) *In the Matter of AVR, L P d/b/a Hyperion of Tennessee, L P Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (*Memorandum Opinion and Order)* 14 F C C R 11,064 (May 27, 1999), (*Memorandum Opinion and Order)* 16 F C C R 1247 (January 8, 2001) The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas,* Docket No 02-00230, *Order Approving Application of Level 3 Communications, L L C to Amend Its Certificate of Public Convenience and Necessity* (June 28, 2002)

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, 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.

The February 3, 2004 Hearing

Pursuant to Tenn. Code Ann § 65-4-204, public notice of the Hearing in this matter was issued by the Hearing Officer on January 20, 2004 No persons sought intervention prior to or during the Hearing At the Hearing held on February 3, 2004, James R. J. Martin, II, President and Chief Executive Officer, and Mr Duane Bennett, Chief Operating Officer, participated in the Hearing, presented testimony, and were subject to examination by the Hearing Officer Upon Citynet's conclusion of the presentation of its proof, the Hearing Officer granted Citynet's *Application* based upon the following findings of fact and conclusions of law:

I. Citynet's Qualifications

1. Citynet is a corporation originally organized under the laws of the State of Deleware on February 10, 2003, and was qualified to transact business in Tennessee on May 9, 2003

2 The complete street address of Citynet's registered agent is Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203. The complete street address of Citynet's corporate office is 343 North Front Street, Suite 400, Columbus, Ohio 43215 The telephone number is (614) 827-7011 and the facsimile number is (614) 827-7010.

3. The *Application* and supporting documentary information existing in the record indicate that Citynet has the requisite technical and managerial ability to provide competing local exchange telecommunications services within the State of Tennessee. Specifically, Citynet's

senior management team possesses extensive business, technical, operational and regulatory telecommunications experience

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

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

II. Proposed Services

Citynet intends to provide competing local telecommunications services, including exchange access telecommunications services, within the State of Tennessee

III. Permitting Competition to Serve the Public Convenience and Necessity

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Citynet's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by 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

1 Citynet has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2 Citynet has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn Code Ann. § 65-5-213

V. Compliance with Tennessee's County-Wide Calling Requirements

1 Citynet has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn Code Ann § 65-21-114

IT IS THEREFORE ORDERED THAT:

1 The *Application for Certificate to Provide Competing Local Telecommunications Services* of Citynet Tennessee, LLC is approved, and

2 Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order

Randal Gilliam, Hearing Officer