

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT
NASHVILLE, TENNESSEE**

April 19, 2006

IN RE:

**JOINT APPLICATION OF COMTEL TELCOM
ASSETS LP, VARTEC TELECOM, INC., EXCELL
TELECOMMUNICATIONS, INC. AND VARTEC
SOLUTIONS, INC. FOR CONSENT TO TRANSFER ASSETS**

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**DOCKET NO.
05-00287**

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Director Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on December 12, 2005 for consideration of the *Joint Application for Consent to Transfer Assets* (“*Joint Application*”) filed by Comtel Telcom Assets LP (“Comtel”) and VarTec Telecom, Inc. (“VarTec”), Excel Telecommunications, Inc. (“Excel”) and VarTec Solutions, Inc. (“VarTec Solutions”) (collectively the “VarTec Companies”) (collectively with Comtel the “Parties”). The Parties sought TRA approval, pursuant to the provisions of Tenn. Code Ann. § 65-4-113 (2004), for a transfer of assets.

Background

Comtel is a limited partnership organized under the laws of the State of Texas. It is a newly formed limited partnership whose principal business will be telecommunications.

The VarTec Companies are privately held corporations. VarTec was initially granted authority to provide resold interexchange and operator services by the Tennessee Public Service

Commission (“TPSC”) in TPSC Docket No. 95-02796. VarTec later received a Certificate of Public Convenience and Necessity (“CCN”) to provide facilities-based and resold local exchange by an Order dated January 29, 2002 in TRA Docket No. 01-00760.

Excel was granted authorization to provide facilities-based and resold local exchange and operator services by an Order issued on September 4, 2002 in TRA Docket No. 02-00382, and resold interexchange operator service in TPSC Docket No. 95-03337.

VarTec Solutions was authorized to provide resold local exchange services in TRA Docket No. 96-00982 and resold interexchange and operator services in TPSC Docket No. 95-02455, both originally issued under the name Dial & Save.

The Joint Application

In the *Joint Application*, which was filed with the TRA on October 19, 2005, the Parties request Authority approval for a transfer of assets. Specifically, Comtel will acquire all the assets of the VarTec Companies and the necessary certification to provide local exchange and interexchange telecommunications services within the State of Tennessee.

Currently operating under bankruptcy protection, the VarTec Companies, pursuant to an Asset Purchase Agreement (“APA”) and the Court-approved action process, will transfer, and Comtel will ultimately acquire substantially all of the assets of the VarTec Companies, including all telecommunications equipment, customer accounts and records, business records, licenses and permits.

Following consummation of the asset transfer, the *Joint Application* states that Comtel will be led by a combination of its own management members and certain members of the existing management team of the VarTec Companies. The transaction will be virtually seamless and transparent to customers in terms of the services they receive. The *Joint Application* asserts

that affected Tennessee customers will be informed and/or receive notification of the transfer, and the transfer will serve the public interest by increasing competition.

Statutory Framework

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

Regarding the transfer of customer base, TRA Rule 1220-4-2-.56(2)(d) states:

(d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:

...

2. A notification letter, pre-approved by the Authority, shall be mailed by the current provider of telecommunications service to its customers describing the customer transfer and explaining that unless the customer selects another telecommunications service provider, the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter. The notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good cause shown, the Authority

may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, but is not limited to, evidence that the current provider is no longer providing service in Tennessee.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

December 12, 2005 Authority Conference

At the December 12, 2005 Authority Conference, the panel found that the transfer serves the public interest by enabling the seamless continuation of telecommunication services to the VarTec Companies' existing Tennessee customers and by stimulating increased competition in the Tennessee telecommunications market. Based on the foregoing findings, the panel voted unanimously to approve the *Joint Application* and to approve the customer notification letter with the following conditions: (1) prior to being mailed to customers, the customer notification letter must be filed with the Authority and must be found consistent with Authority Rule 1220-4-2-.56(2)(d); and (2) an approved customer notification letter must be mailed to customers no less than 30 days prior to the transfer.

IT IS THEREFORE ORDERED THAT:

1) The transfer of authority of VarTec Telecom, Inc., Excel Telecommunications, Inc. and VarTec Solutions, Inc. to Comtel Telcom Assets LP as described in the *Joint Application for Consent to Transfer Assets* and discussed herein is approved.

2) The customer notification letter is approved contingent on the following:

a) Prior to being mailed to customers, the customer notification letter must be filed with the Authority and must be found consistent with Authority Rule 1220-4-2-.56(2)(d) by

Authority Staff; and

b) An approved customer notification letter must be mailed to customers no less than 30 days prior to the transfer.

3) The Applicants shall file with the Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.

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Deborah Taylor Tate, Director¹



Pat Miller, Director



Sara Kyle, Director

¹ Director Tate voted in agreement with the other directors but resigned her position as director before the issuance of this order.