

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

May 24, 2006

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| IN RE: |) | |
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| JOINT PETITION OF BCN TELECOM, INC. AND |) | DOCKET NO. |
| TELECOM ACQUISITION COMPANY, LLC FOR |) | 06-00018 |
| APPROVAL OF INDIRECT TRANSFER OF CONTROL |) | |

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Ron Jones, 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 March 6, 2006 for consideration of the *Joint Petition of BCN Telecom, Inc. and Telecom Acquisition Company, LLC for Approval of an Indirect Transfer of Control* (“*Joint Petition*”)¹. The *Joint Petition* filed by BCN Telecom, Inc. (“BCN” or the “Company”) and Telecom Acquisition Company, LLC (“TACO” and together with BCN, “Petitioners”) on February 6, 2006 seeks approval for a transfer of control pursuant to the provisions of Tenn. Code Ann. § 65-4-113 (2004).

The Joint Petition

BCN is a New Jersey corporation with principal offices located in Bedminster, New Jersey. BCN, f/k/a NUI Telecom, Inc. (“NUI”)² currently has 106 customers in the State of Tennessee and

¹ BCN initially filed a petition on January 19, 2006, requesting the Authority’s approval of the proposed indirect transfer of control of Telecom Acquisition Company, LLC. On February 6, 2006, the petition was re-filed as a Joint Petition between the Parties.

² See *In re: Petition of NUI Telecom, Inc. for Approval to Change Their Name to BCN Telecom, Inc.*, Docket No. 04-00116, *Order Granting Approval of the Petition of NUI Telecom, Inc. for a Name Change* (September 22, 2004).

was granted a certificate to provide competing local exchange telecommunications services in Tennessee by Authority Order in Docket No. 03-00066 on March 28, 2003. In Docket No. 03-00577 on December 18, 2003, the Authority approved the transfer of control and ownership of NUI to TACO. BCN is currently authorized as a reseller of intrastate interexchange telecommunications services throughout the United States and has resale and/or facilities-based local exchange authority in 22 states.

TACO is a New Jersey limited liability company and the parent holding company for BCN. TACO is not authorized to provide and does not provide telecommunications services in any jurisdiction. Advance Capital Partners, LLC; JADM Partners, LP; Salvatore Tiano; and ELD Partners, LP; (collectively "Sellers") currently hold equity membership interest in TACO and are the Sellers in this transaction.

The *Joint Petition* states that TACO has reached an agreement with the Sellers whereby TACO will acquire all of the membership interest of the Sellers, subject to certain regulatory approvals. On January 20, 2006, in WC Docket No. 06-29, the Petitioners filed a Domestic Section 214 Application with the Federal Communications Commission ("FCC") requesting authority for the transfer of control of BCN through the sale of TACO. Specifically, TACO agreed to purchase and redeem 100% of the equity membership interests of the Sellers. Under the agreement, Sellers agree to sell TACO all of their equity membership interests at the closing. The *Joint Petition* asserts that BCN will continue to be solely owned by TACO after the transaction, and this indirect transfer of control will occur at the parent level without any impact on the certificated entity. Furthermore, the Petitioners are not seeking to transfer BCN's operating authority in connection with the transaction.

The *Joint Petition* indicates that BCN will continue to be led by the same team of well-qualified telecommunications professionals, and the proposed transfer will be transparent to and have

no adverse impact on BCN customers. The Petitioners maintain that after the transfer, BCN will continue to operate as it has in the past, using the same tariff, operating authority, and the same name.

According to the *Joint Petition*, this transaction serves the public interest of utility customers in Tennessee because it will allow BCN to benefit from increased economies of scale and will permit the BCN to operate more efficiently and to compete more effectively.

The March 6, 2006 Authority Conference

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) (2004) 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.

At the regularly scheduled Authority Conference held on March 6, 2006, the voting panel assigned to this docket found that the transfer benefits the public in as much as the transfer will not reduce the number of providers in the state, and according to the Petitioners, the transfer will allow investors who no longer wish to participate in Telecom Acquisition Company, LLC, to exit that company. Further, the panel found that services will continue to be provided by BCN in the

same manner as they were provided prior to the transaction. Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-113 (2004), the panel voted unanimously to grant approval of the *Joint Petition* contingent upon FCC approval.

IT IS THEREFORE ORDERED THAT:

1. The *Joint Petition of BCN Telecom, Inc. and Telecom Acquisition Company, LLC for Approval of an Indirect Transfer of Control* is approved, contingent upon the FCC's approval of the parties' Domestic Section 214 Application.
2. Because this transaction is an indirect transfer of authority, BCN Telecom, Inc. will retain its certificate of public convenience and necessity.
3. The Petitioners shall file with the Authority any documentation received from the FCC regarding the transfer.



Ron Jones, Chairman



Pat Miller, Director



Sara Kyle, Director