

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 9, 2006

IN RE:

PETITION FOR APPROVAL TO INCREASE  
THE AMOUNT OF AN EXISTING SECURED  
REVOLVING CREDIT FACILITY

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DOCKET NO.  
06-00056

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ORDER APPROVING FINANCING TRANSACTION

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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 20, 2006 for consideration of the *Petition for Approval to Increase the Amount of an Existing Secured Revolving Credit Facility* ("Petition") of TelCove, Inc. ("TelCove"), TelCove Operations, Inc. ("TelCove Operations"), TelCove of Tennessee, Inc. ("TelCove of Tennessee"), and TelCove of Nashville, L.P. ("TelCove of Nashville"), (collectively "Petitioners"),<sup>1</sup> requesting approval from the Authority to increase the amount of an existing secured loan facility pursuant to Tenn. Code Ann. § 65-4-109 (2004).

**The Petition**

TelCove is a corporation duly organized and existing under the laws of Delaware with its principal office located in Coudersport, PA. TelCove Operations and TelCove of Tennessee are direct, wholly-owned subsidiaries of TelCove. TelCove of Tennessee owns a 95% general partnership interest in TelCove of Nashville. The other 5% partnership interest in TelCove of

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<sup>1</sup> On January 31, 2005, in Docket 03-00458, the Authority approved the name changes of Adelphia Business Solutions of Nashville, LP and Adelphia Business Solutions Operations, Inc. to TelCove of Nashville, LP and TelCove Operations, Inc. respectively.

Nashville is owned indirectly by TelCove Operations. TelCove Operations and TelCove of Nashville are certificated by the Authority and operate in Tennessee as facilities-based telecommunications carriers (the “Tennessee Operating Entities”).

The *Petition*, filed on February 22, 2006, requests Authority approval to increase the amount of an existing secured revolving credit facility. In Docket No. 05-00125, the Authority approved financing transactions allowing Petitioners to enter into a \$65 million dollar senior secured multi-draw second lien and first mortgage term loan facility (“Loan”) and increasing the amount available through the credit facility by \$15 million.<sup>2</sup> The financing arrangement was approved for the purposes of capital expenditures, acquisitions, and other general corporate purposes.<sup>3</sup> To secure financing, Petitioners were authorized to pledge the assets of all of its operating entities, including those assets of the Tennessee Operating Entities.

The Petitioners are now seeking approval to increase the maximum amount of the Loan from \$65 million dollars to \$85 million dollars, a net increase of \$20 million dollars. The *Petition* maintains that apart from the increased maximum amount of the Loan, the substantive terms and conditions will remain substantially unchanged, including, but not limited to, the interest rate. The Loan will continue to be secured by 1) perfected second priority liens on general collateral; and 2) perfected first priority liens and mortgages on mortgage collateral. The *Petition* states that as with the Loan, the general collateral includes all tangible and intangible property of the borrowers and guarantors of the Loan, including the Tennessee Operating Entities. The mortgage collateral includes all rights, title, and interests of the borrowers and guarantors of the Loan, including the Tennessee Operating Entities, in certain real property.<sup>4</sup>

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<sup>2</sup> *In re: Petition of TelCove, Inc., TelCove Operations, Inc., TelCove of Tennessee, Inc., and TelCove of Nashville for Approval to Increase the Amount of an Existing Secured Revolving Credit Facility and to Issue New Debt*, Docket No. 05-00125, *Order Approving Financing Transactions* (July 6, 2005).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> None of the real property at issue is located in Tennessee.

The *Petition* asserts that the stock ownership and management of the Tennessee Operating Entities will not change as a result of the proposed increase in the maximum amount of the Loan, and the Tennessee Operating Entities will continue to offer existing customers the same services under the same rates, terms, and conditions. In addition, the Petitioners assert that there will be no service interruptions or changes to the tariffed conditions of the Tennessee Operating Entities' services as a result of the approval of the proposed financing transactions.

According to the *Petition*, this transaction serves the public interest as it will enable Petitioners to obtain additional financing and working capital critical to the ability of the Tennessee Operating Entities to continue to offer competitive services in Tennessee. The proposed financing transaction will benefit Petitioners, and ultimately consumers, by allowing broader consumer choice, more efficient utilization of existing and to be acquired telecommunications resources and facilities, and product and service innovation. The proposed increased financing transaction will allow Petitioners to continue to serve existing Tennessee customers, to construct and operate its network and facilities, and to improve and enhance Petitioners' service capabilities to benefit existing and prospective customers. The transaction will strengthen the Tennessee Operating Entities' ability to compete in the local exchange service market by providing greater access to greater financial resources. These resources will allow Petitioners to respond to competitive pressures in the evolving telecommunications market and to continue to provide consumers with full facilities-based competitive choice. In addition, the Petitioners assert that the transaction will foster competition in the telecommunications market.

#### **The March 20, 2006 Authority Conference**

Tenn. Code Ann. § 65-4-109 (2004) states:

No public utility shall issue any stocks, stock certificates, bonds, debentures, or other evidences of indebtedness payable in more than one (1) year from the date thereof, until it shall have first obtained authority from the authority for such proposed issue. It shall be the duty of the authority after hearing to approve any such proposed issue maturing more than one (1) year from the date thereof upon being satisfied that the

proposed issue, sale and delivery is to be made in accordance with law and the purpose of such be approved by the authority.

At a regularly scheduled Authority Conference held on March 20, 2006, the panel voted unanimously to approve the *Petition* based on the *Petition* and responses to Data Requests and made the following findings:

1. The proposed transaction is subject to approval pursuant to Tenn. Code Ann. § 65-4-109 (2004);
2. The proposed transaction will affect the assets of TelCove's Tennessee subsidiaries;
3. The Petitioners did not indicate that they are required to obtain approval from any federal agency but stated that they have sought approval in other states;
4. Tennessee has a legitimate interest in monitoring the integrity of the competitive marketplace which includes obtaining information on the financial transactions and fitness of certificated telecommunications carriers;
5. The burden of complying with Tenn. Code Ann. § 65-4-109 (2004) is minimal as such compliance should be perfunctory given the telecommunications industry's movement to a competitive environment;
6. The proposed transaction is being made in accordance with the laws enforceable by the Authority; and
7. The purpose of the transaction is in the public interest because based on the assertions of the Petitioners, the transactions will strengthen their financial position, and enable them to better serve the citizens of Tennessee through broader consumer choice and more efficient utilization of telecommunications resources.

**IT IS THEREFORE ORDERED THAT:**

1. TelCove, Inc., TelCove Operations, Inc., TelCove of Tennessee, Inc. and TelCove of Nashville, L.P. are authorized to enter into the financing transaction as described in the *Petition for*

*Approval to Increase the Amount of an Existing Secured Revolving Credit Facility* and discussed herein.

2. The authorization and approval given hereby shall not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risk involved to a purchaser has been performed. Nothing contained herein creates or is intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof for the transactions approved herein.

  
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Ron Jones, Chairman

  
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Pat Miller, Director

  
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Sara Kyle, Director