

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

<b>IN RE:</b>	<b>August 2, 2006</b>	)	
		)	
<b>JOINT PETITION OF YORKVILLE</b>		)	<b>DOCKET NO.</b>
<b>COMMUNICATIONS, INC. AND WEST KENTUCKY</b>		)	<b>06-00125</b>
<b>NETWORKS D/B/A WK.NET FOR TRANSFER OF</b>		)	
<b>CUSTOMER BASE AND OTHER ASSETS</b>		)	

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**ORDER APPROVING TRANSFER OF AUTHORITY  
AND CUSTOMER NOTIFICATION LETTER**

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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 May 15, 2006 for consideration of the *Joint Application for Transfer of Customer Base and Other Assets* ("Joint Application") filed on April 27, 2006 by Yorkville Communications, Inc. ("YCOM") and West Kentucky Networks, Inc. d/b/a wk.net ("Networks") (collectively the "Applicants").

**The Joint Application**

YCOM, a Tennessee corporation with principal offices located in Yorkville, Tennessee, is a wholly-owned subsidiary of Yorkville Telephone Cooperative, Inc. ("Yorkville Cooperative"), a Tennessee telephone cooperative organized under the Tennessee Telephone Cooperative Act, pursuant to Tenn. Code Ann. § 65-29-101 *et seq.* YCOM is authorized as a long distance reseller in Tennessee by Authority Order in Docket No. 00-00023 issued on March 14, 2000.

Networks is a Kentucky corporation with principal offices located in Mayfield, Kentucky and is a wholly-owned subsidiary of West Kentucky Rural Telephone Cooperative Corporation, Inc. ("West Kentucky"), a Kentucky corporation providing services in Tennessee as a telephone

cooperative pursuant to Tenn. Code Ann. § 65-29-128 (2004). Networks is authorized as a long distance reseller in Tennessee by Authority Order in Docket No. 99-00155 on January 25, 2000.

The *Joint Application*, filed on April 27, 2006, requests Authority approval for the proposed transfer of customer base and other assets that will affect approximately 2,210 Tennessee customers. In accordance with an Asset Purchase Agreement dated April 10, 2006 (the “Agreement”), between YCOM and Networks, YCOM will, among other things, transfer its long distance customers and any assets related to its provisioning of resold long distance services, to Networks. In addition, the Applicants request that, to the extent necessary, the Authority waive any applicable anti-slamming regulations. In WC Docket No. 06-86, Yorkville Cooperative, YCOM, West Kentucky Cooperative, and Networks currently have a domestic Section 214 application pending before the FCC regarding the authority to assign certain telecommunications assets, including domestic Section 214 authorizations, from Yorkville Cooperative to West Kentucky Cooperative, and from YCOM to Networks, respectively, in the context of related Asset Purchase Agreements.

The *Joint Application* indicates that prior to closing the relevant transactions set forth in the Agreement, the membership of Yorkville Cooperative must approve the same.<sup>1</sup> The *Joint Application* states that subsequent to the transfer, YCOM will cease its telecommunications operations and eventually be dissolved.

According to the *Joint Application*, Networks has the requisite technical, financial, and managerial capabilities to acquire the customer assets of YCOM and to ensure the seamless provision of telecommunications services. The *Joint Application* also states that both YCOM and Networks will file with the Authority the necessary tariff revisions to implement the transfer.

The Applicants assert that pursuant to Authority Rule 1220-4-2-.56(2)(d), prior to the transfer to Networks, YCOM and Networks will provide the affected customers with notice of the change in

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<sup>1</sup> On April 28, 2006, the Applicants filed with the Authority the Election Officer’s Certificate reporting and verifying that the members of the Yorkville Telephone Cooperative, Inc. approved the asset sale that is the subject of the *Joint Application* by a vote of 224-3 at the Special Meeting held on April 27, 2006.

long distance providers. In addition, the *Joint Application* maintains the transfer will be transparent to the affected customers and will not alter the manner or quality of service that YCOM's current long distance customers enjoy. The *Joint Application* also states that Networks agrees to provide 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 transfer of customers.

The *Joint Petition* states that all affected YCOM customers will receive notification in advance of the transfer and requests permission to issue the notification letter required under Authority Rule 1220-4-2-.56(2)(d)(2) on or before May 1, 2006 so that customers may receive the 30 day notice required under the rule. This notice letter would, however, have to be issued prior to approval by the Authority. Therefore, the Applicants request the Authority grant a waiver of both TRA Rule 1220-4-2-.56(2)(d)(2) and any applicable anti-slamming regulations.

According to the *Joint Application*, the public interest will be served by the transfer of YCOM's customers to Networks, an experienced and qualified telecommunications provider, and that Networks has the technical, financial, and managerial capabilities to provide quality service to YCOM's customer base. The *Joint Application* maintains this transaction serves the public interest in promoting the continuation of uninterrupted services, products and carrier expertise. In addition, the *Joint Application* asserts there will be no changes to the affected customers' service plans, rates, features, terms or conditions of service as a result of this proposed transaction.

#### **The May 15, 2006 Authority Conference**

The transfer at issue in this docket is governed by Tenn. Code Ann. § 65-4-112 (2004). Tenn. Code Ann. § 65-4-112 (2004) requires that public utilities obtain TRA approval before merging or consolidating property, rights or franchises with utilities of like character holding a certificate of public convenience and necessity ("CCN") in the State of Tennessee. Tenn. Code Ann. § 65-4-112(a) (2004) provides:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the [A]uthority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Regarding the transfer of customer base, Authority 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:

1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00-257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
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.

At the regularly scheduled Authority Conference held on May 15, 2006, the panel found that the proposed transaction will be transparent to customers and is in the public interest because

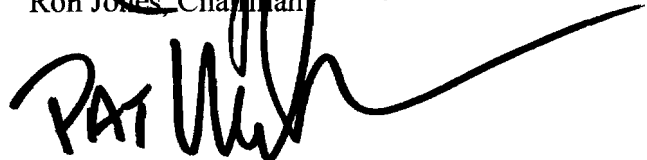
customers will continue to receive quality service. No person or entity has intervened to contest the Applicants' assertions or any other aspect of the Asset Purchase Agreement. In addition, except for the pre-approval requirement, the Applicants had complied with TRA Rule 1220-4-2-.56(2)(d).

Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-112 (2004), the panel voted unanimously to approve the transfer, waive the pre-approval provision of Authority Rule 1220-4-2-.56(2)(d) and approve the customer notification letter filed by the Applicants.

**IT IS THEREFORE ORDERED THAT:**

1. The transfer of authority from Yorkville Communications, Inc. to West Kentucky Networks, Inc. as discussed in the *Joint Application* and described herein is approved.
2. Pre-approval of the customer notification letter by the Authority, as provided in Authority Rule 1220-4-2-.56(2)(d)(2), is waived.
3. The customer notification letter filed with the *Joint Application* on April 27, 2006, is approved pursuant to Authority Rule 1220-4-2-.56(2)(d).

  
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Ron Jones, Chairman

  
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Pat Miller, Director

  
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Sara Kyle, Director