

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**February 1, 2007**

|   |   |                   |
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| <b>IN RE:</b>                             | ) |                   |
|   | ) |                   |
| <b>JOINT PETITION OF BROADVIEW</b>        | ) | <b>DOCKET NO.</b> |
| <b>NETWORKS HOLDINGS, INC. AND</b>        | ) | <b>06-00169</b>   |
| <b>ATX LICENSING, INC. FOR APPROVAL</b>   | ) |                   |
| <b>OF AN INDIRECT TRANSFER OF CONTROL</b> | ) |                   |
| <b>AND RELATED FINANCING TRANSACTION</b>  | ) |                   |

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**ORDER APPROVING FINANCING TRANSACTION**

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This matter came before Director Eddie Roberson, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on August 23, 2006 for consideration of the *Joint Petition* of Broadview Networks Holdings, Inc. ("Broadview Holdings") and ATX Licensing, Inc. ("ATX," together "Petitioners") for approval of a transfer of authority of ATX and related financing transaction.

**The Joint Petition**

ATX is a facilities-based integrated communications provider offering local exchange carrier and interexchange telephone, Internet, e-business, and high-speed data services to business and residential customers in targeted markets throughout the mid-Atlantic and Midwest regions of the United States. ATX is headquartered in King of Prussia, Pennsylvania and is a subsidiary of ATX Communications Inc., a Delaware corporation.<sup>1</sup> ATX Communications, Inc. is a wholly-owned

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<sup>1</sup> ATX Licensing, Inc. is a wholly-owned subsidiary of CoreComm-ATX, Inc., which, in turn, is a wholly-owned subsidiary of CoreComm Communications, Inc., which, in turn, is a wholly-owned subsidiary of ATX Communications, Inc.

subsidiary of Leucadia National Corporation (“Leucadia”). Leucadia is a publicly traded (NYSE: LUK) holding company headquartered in New York, NY. The Company engages in diversified businesses in the United States including manufacturing, healthcare services, telecommunications, real estate, and other activities.

In Tennessee, ATX has approximately 38 customers, and is authorized to provide intrastate interexchange telecommunications services pursuant to Authority Order in Docket No. 05-00093, issued on September 29, 2005.<sup>2</sup> ATX is also authorized by the Federal Communications Commission (“FCC”) to provide international and domestic interstate services as a non-dominant carrier.

Broadview Holdings is a privately held Delaware corporation with offices located in Rye Brook, New York. Broadview Holdings is the corporate parent of Broadview Networks, Inc. (“Broadview”), a New York corporation with offices also located in Rye Brook, New York. Broadview is a networked-based electronically integrated communications provider which serves small and medium-sized businesses in the northeastern and mid-Atlantic United States. Broadview is authorized to provide competitive telecommunications services in approximately 20 states and is authorized by the FCC to provide international and interstate service.

Broadview Holdings is also the parent company of Broadview NP Acquisition Corp. (“Broadview NP”), BridgeCom International, Inc. (“BridgeCom”), and TruCom Corporation (“TruCom”). Broadview NP, and BridgeCom are Delaware corporations. These subsidiaries also hold authorizations to provide competitive telecommunications services in multiple states and authority from the FCC to provide international and interstate services. None of Broadview

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<sup>2</sup> The TRA granted ATX Telecommunications Services, Ltd. authorization to provide telecommunications services in Tennessee by Authority Order dated March 14, 2000, in Docket No. 00-00089. Subsequently, ATX Telecommunications Services Ltd. assigned its authorization to ATX Licensing, Inc. by Authority Order dated September 29, 2005, in Docket No. 05-00093.

Holdings' operating subsidiaries hold any certifications nor provide any telecommunications in Tennessee.

In the *Joint Petition*, the Petitioners request Authority approval to consummate a proposed transfer of authority transaction whereby Broadview Holdings will acquire control of ATX through an indirect transfer of control. Also, the Petitioners are seeking approval to participate in certain related financing arrangements. The Petitioners currently have a Domestic Section 214 application pending before the FCC in WC Docket No. 06-132 seeking authority for the transfer of ATX to Broadview Holdings.

The *Joint Petition* states that ATX Communications, Inc. and stockholders of ATX Communications, Inc. collectively own all of the outstanding shares of ATX Communications, Inc., parent to ATX. Under the proposed transaction, Broadview Holdings will purchase all outstanding shares of ATX Communications, Inc. for cash. As a result, Broadview Holdings will control ATX Communications, Inc., the parent of ATX. Immediately following the consummation of the proposed indirect transfer of control of ATX Communications, Inc.'s subsidiary, ATX to Broadview Holdings, ATX will continue to provide service to its customers under the name of ATX Licensing, Inc.

According to the *Joint Petition*, Broadview Holdings expects to pay cash as consideration for the stock purchase. Upon closing, ATX Communications, Inc. and its subsidiaries, including ATX will become co-borrowers or guarantors in the existing indebtedness of Broadview Holdings and will pledge their assets as security. Accordingly, the Petitioners request approval to pledge their assets and enter into financing arrangements with Jefferies Finance, LLC, for a total aggregate amount of up to \$250 million. The financing arrangements will involve long-term financing including the issuance of high-yield secured notes, a revolving credit facility, a long-term loan or a combination of these financing vehicles.

In response to a TRA Staff Data Request filed on July 7, 2006, the Petitioners stated that all ATX assets in Tennessee will be pledged as collateral for the financing transactions to secure the existing Broadview Holdings financing. Specifically, ATX will be required to provide a perfected first priority

security interest in all tangible and intangible assets, including without limitations, intellectual property, real property, licenses, permits, and capital stock (collectively, the “Collateral”). The Collateral does not include any escrow account, motor vehicles, leasehold interests in real property, rights under any contract that contains a valid and enforceable prohibition on assignment of such rights, equipment securing permitted capitalized lease obligations, purchase money indebtedness, payroll accounts or cash collateral accounts.

The *Joint Petition* states that immediately following the consummation of the proposed transaction, ATX will continue to operate as a separate subsidiary of Broadview Holdings and continue to offer service with no change in the rates, terms and conditions of service. Further, as ATX will continue operation, the transfer of authority will not result in a change of carrier for customers. As a result, the transfer of authority of ATX will be seamless and transparent to consumers in the State of Tennessee.

According to the *Joint Petition*, a portion of the funds from the financing arrangements will be used to repay existing indebtedness, and the Petitioners plan to use the remaining funds to provide working capital, finance capital expenditures, transactional costs, and/or for other general corporate purposes.

The Petitioners maintain that the proposed transaction will provide ATX access to Broadview Holdings’ substantial technical and management expertise, financial resources, and complementary suite of services. As a result, the proposed transaction will enable ATX’s customers to benefit from Broadview Holdings’ national network and broad suite of IP-based services. The *Joint Petition* asserts that together, these benefits are expected to strengthen ATX’s ability to expand their offerings and provide more advanced telecommunications services to a broader customer base in Tennessee. According to the *Joint Petition*, the proposed acquisition has the potential to enable both ATX and Broadview Holdings to strengthen their competitive position in Tennessee to the benefit of Tennessee consumers and the State’s telecommunications marketplace.

### **August 23, 2006 Authority Conference**

The Petitioners submitted the *Joint Petition* requesting approval to consummate a proposed transfer of authority pursuant to Tenn. Code Ann. § 65-4-112 (2004) and to participate in certain related financing transactions pursuant to Tenn. Code Ann. § 65-4-109 (2004). However, Tenn. Code Ann. § 65-4-112 governs transfers between two public utilities, which does not apply to the parties in this docket. Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer, either directly or indirectly, its authority to provide utility services to a non-public utility. Tenn. Code Ann. § 65-4-113(a) (2004) provides:

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 a regularly scheduled Authority Conference held on August 23, 2006, the voting panel assigned to this docket found that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-113 (2004) rather than Tenn. Code Ann. § 65-4-112 (2004) because the latter section applies to transactions between two public utilities, which is not true of the parties in this docket. The panel found that the transfer furthers the public interest such that, but not limited to, the fact that the telecommunication services will continue to be provided by ATX under the same rates, terms, and conditions, and the transfer will be transparent to the customers of ATX. Further, the transfer will provide ATX with access to

Broadview's substantial technical, managerial, and financial resources, and will enable ATX customers to benefit from Broadview's national network and broad suite of IP-based services. Based on its findings 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 transfer contingent upon FCC approval, and directed the parties to file with the Authority any documentation from the FCC regarding subsequent action on the change of ownership.

At the Authority Conference held on August 23, 2006, the voting panel assigned to this docket considered the financing transaction proposed by the parties in the *Joint Petition*, and found that the transaction is subject to approval pursuant to Tenn. Code Ann. § 65-4-109 (2004), which 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.

Thereby, the panel voted unanimously that the proposed financial transaction is made in accordance with the laws enforceable by the Authority and that it is in the public interest because it will strengthen the ability of ATX to expand its offerings and provide more advanced telecommunications services to a broader customer base in Tennessee.<sup>3</sup>

**IT IS THEREFORE ORDERED THAT:**

1. The indirect transfer of authority of ATX Licensing, Inc. to Broadview Networks Holdings, Inc. as described in the *Joint Petition* and discussed herein is approved contingent upon the Federal Communications Commission's approval of the Domestic and International Section 214

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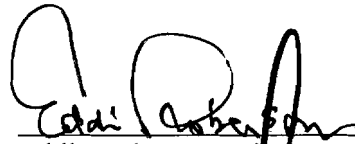
<sup>3</sup> Along with his concurrence of the panel decision, Director Jones stated the following additional findings: (1) the proposed financing transaction is expected to affect the Tennessee assets of the Tennessee certificated entity; (2) the Petitioners have filed similar petitions in other states and the FCC; (3) 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; and (4) the burden of complying with Tenn. Code Ann. § 65-4-109 (2004) is minimal, and such compliance should be perfunctory given the telecommunications industry's movement to a competitive environment.

Application for the Transfer of Control of ATX Licensing, Inc. to Broadview Networks Holdings, Inc.

2. Because this transaction is an indirect transfer of authority, ATX Licensing, Inc. will become a direct, wholly-owned subsidiary of Broadview Networks Holdings, Inc. and will retain its certificate of public convenience and necessity.

3. Broadview Networks Holdings, Inc. and ATX Licensing, Inc. are authorized to enter into the financing transaction as described in the *Joint Petition* and discussed herein.

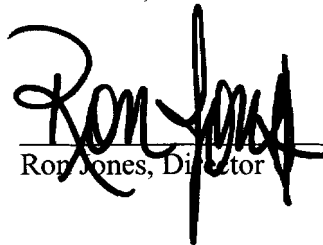
4. The authorization and approval given hereby shall not be used by any party, including, but not limited to, any lending party, for the purpose of inferring an analysis or assessment of the risk involved to a purchaser has been performed. Nothing contained herein creates or is intended to create any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



Eddie Roberson, Director



Pat Miller, Director



Ron Jones, Director