

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 6, 2007

IN RE:

**JOINT APPLICATION FOR APPROVAL TO TRANSFER
CONTROL OF US LEC OF TENNESSEE INC. AND FOR
US LEC OF TENNESSEE INC. AND PAETEC
COMMUNICATIONS, INC. TO PARTICIPATE IN
RELATED DEBT FINANCING ARRANGEMENT**

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**DOCKET NO.
06-00221**

**ORDER APPROVING TRANSFER OF AUTHORITY
AND FINANCING TRANSACTION**

This matter came before Chairman Sara Kyle, 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 October 16, 2006 for consideration of the *Joint Application* filed on August 31, 2006 by PAETEC Corp. ("PAETEC") and US LEC Corp. ("US LEC"), (together "Applicants").

The Joint Application

On August 31, 2006, PAETEC and US LEC filed their *Joint Application* requesting the Authority's approval to transfer ultimate indirect control of US LEC's operating subsidiary, US LEC of Tennessee Inc. ("US LEC- TN") to PAETEC. The *Joint Application* also seeks approval for US LEC-TN and PAETEC Communications, Inc. ("PAETEC Communications"), PAETEC's operating subsidiary, to participate in certain debt financing arrangements related to the transfer of control.

US LEC-TN, a Delaware corporation, is a wholly-owned subsidiary of US LEC, a publicly traded Delaware corporation. Both companies maintain their principal offices in Charlotte, North Carolina. US LEC is a leading provider of Internet Protocol (“IP”), data and voice solutions to business customers and enterprise organizations throughout the Eastern United States. Members of the US LEC family of companies are currently authorized to provide resold and/or facilities-based telecommunications services in forty-three states and the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis.

US LEC-TN is authorized to provide local exchange, exchange access, and interexchange telecommunications services in Tennessee, pursuant to certification granted by Authority Order in Docket No. 97-00387, on September 18, 1997. In addition to Tennessee, US LEC-TN and its affiliates provide local exchange services in several other states, including the District of Columbia. US LEC operating subsidiaries are also authorized by the Federal Communications Commission (“FCC”) to provide international and domestic interstate services as non-dominant carriers.

PAETEC is a privately held Delaware corporation headquartered in Fairport, New York. Formed in 1998, PAETEC provides communications solutions to medium and large businesses and institutions through a full line of telecommunications and Internet services, enterprise communications management software, security solutions, and managed services. Through its operating subsidiaries, PAETEC offers personalized solutions that include a comprehensive suite of Voice over Internet Protocol (“VOIP”) services delivered over its Private-IP Multi Protocol Label Switching (“MPLS”) network. PAETEC has more than 1,000,000 access line equivalents in service, and currently serves more than 15,000 core business customers in twenty-nine

markets. In 2005, PAETEC enjoyed unprecedented growth, as reflected in its communications revenues surpassing the \$500,000,000 mark, a year-over-year increase of 23.1%.

In Tennessee, PAETEC operates through its wholly-owned subsidiary, PAETEC Communications, which is authorized to provide resold interexchange telecommunications services and operator services pursuant to certification granted by the Authority in Docket No. 98-00691, on December 1, 1998.

The Applicants request approval to consummate a proposed indirect transfer of authority of US LEC-TN and, approval for US LEC-TN and PAETEC Communications to participate in certain related debt refinancing arrangements, and currently have a Domestic Section 214 Application, regarding the transfer of control of US LEC to PAETEC in WC Docket No. 06-171, pending before the FCC. The *Joint Application* states that pursuant to the terms of an Agreement and Plan of Merger (“Merger Agreement”) dated August 11, 2006, PAETEC and US LEC will become wholly-owned subsidiaries of a new publicly owned holding company (“New PAETEC”), which is expected to change its name to “PAETEC Communications Corp, following the receipt of necessary regulatory approvals, approval by a majority of the shareholders of US LEC and PAETEC, and satisfactory closing conditions.” Under the proposed transaction, taking into consideration outstanding rights to acquire shares in the new holding company in the future, PAETEC shareholders will own approximately 2/3 and US LEC shareholders will own approximately 1/3 of New PAETEC. At the close of the transaction, PAETEC shareholders will be entitled to receive 1.623 shares in New PAETEC in exchange for each share of PAETEC that they currently own, and US LEC shareholders will be entitled to receive one share for each share of US LEC that they currently own. The Merger Agreement provides that the board of directors of New PAETEC will have nine directors, six of which will be appointed by PAETEC, and three by US LEC. The Merger Agreement also provides

for the appointment of certain officers of New PAETEC. Specifically, PAETEC's Chief Executive Officer ("CEO"), Chief Financial Officer ("CFO"), and Chief Operating Officer ("COO") will become the CEO, CFO, and COO, respectively, of New PAETEC. US LEC's CFO will lead the integration efforts as Executive Vice President of Integration.

As a result of the Merger, indirect control of US LEC-TN will be transferred to New PAETEC, which will be majority-owned and controlled by current PAETEC shareholders and directors. According to the *Joint Application*, the Merger will not result in a transfer of control of PAETEC Communications because following consummation of the Merger, PAETEC Communications will continue to be majority owned and controlled by current PAETEC shareholders and directors. The Applicants assert that PAETEC has the managerial, technical, and financial qualifications to acquire ultimate control of US LEC-TN and although the proposed transfer of authority will result in a change in the ultimate ownership of US LEC-TN, no transfer of certificates, assets, or customers will occur as a consequence. The *Joint Application* states that immediately following the closing of the proposed transaction, US LEC will continue to provide service to its existing customers in Tennessee under the US LEC name with no change in the rates, terms or conditions of service currently provided. Therefore, the proposed transaction will be transparent to US LEC-TN's customers.

Concurrently with the consummation of the Merger, New PAETEC will enter into senior secured credit facilities ("New Credit Facilities") in the aggregate principal amount of \$850,000,000. Each direct and indirect subsidiary of New PAETEC, including US LEC-TN and PAETEC Communications, will be required to provide an unconditional guaranty of all amounts owing under the credit facilities and grant a security interest in their respective assets to secure all amounts owing under the New Credit Facilities. The New Credit Facilities will include a \$625,000,000 first-lien term

loan and a \$175,000,000 second-term loan, both of which will be incurred on the closing date to fund the Debt Refinancing and to pay the fees and expenses incurred in connection with the Merger and Refinancing transactions. On closing, all outstanding obligations existing under (i) US LEC's Second Priority Senior Secured Floating Rate Notes in the aggregate principal amount of \$150,000,000, due in 2009, an existing, unused revolving \$10,000,000 secured credit facility, and (ii) PAETEC's existing First Lien Credit Agreement and Second Lien Credit Agreement in the total aggregate principal amount of \$375,000,000, will be repaid in full from the proceeds of the New Credit Facilities. The final maturity date of the first-lien term loan and the second-lien term loan is 6 and 7 years, respectively, from the date of the closing. The remaining portion of the debt financing consists of a \$50,000,000 revolving credit facility ("Revolver"), which is to be utilized on a going forward basis for working capital, capital expenditure, and general corporate purposes. No portion of the Revolver, however, will be used to pay amounts owing to finance the Debt Refinancing or to pay any fees and expenses incurred in connection with the Merger and Debt Refinancing. The maturity date of the Revolver is 5 years from the date of closing.

In a Data Response filed on September 14, 2006, Applicants stated that PAETEC will not pledge any Tennessee assets as collateral for any debt issued, however, the combined existing assets of its subsidiaries, PAETEC Communications and US LEC-TN, will be pledged as collateral for the financing arrangements.

October 16, 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) 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 application 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.

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

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 the regularly scheduled Authority Conference held on October 16, 2006, the voting panel assigned to this docket considered the indirect transfer of authority and the financing transaction requested in the *Joint Application* and voted unanimously to approve the transfer of Authority pursuant to Tenn. Code Ann. § 65-4-113 (2004) and the related financing transaction pursuant to § 65-4-109 (2004), contingent upon FCC approval.¹

IT IS THEREFORE ORDERED THAT:

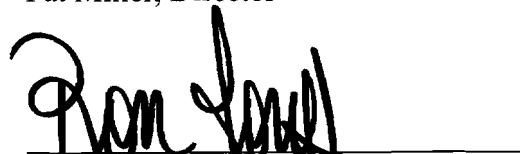
1. PAETEC Corp. and US LEC Corp. are authorized to enter into the financing transaction as described in the *Joint Application* and discussed herein.

¹With regard to the application for approval to enter financing arrangements, pursuant to Tenn. Code Ann. § 65-4-109 (2004), Director Jones made the following additional findings:

1. Per the *Joint Application*, the Tennessee certificated entities will be required to provide an unconditional guarantee on all amounts owing under the credit facilities;
2. The Applicants have filed similar petitions on notices in other states;
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 compliance 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.

2. The indirect transfer of authority of US LEC of Tennessee Inc. to PAETEC Corp. as described in the *Joint Application* and discussed herein is approved contingent on approval by the Federal Communications Commission.

3. The authorization and approval given hereby shall not be used by any party for the purpose of inferring an analysis or assessment of the risks involved. 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.


Sara Kyle, Chairman
Pat Miller, Director
Ron Jones, Director