

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 13, 2007

IN RE:

JOINT APPLICATION BY UNIVERSAL ACCESS, INC.  
AND VANCO DIRECT USA, LLC FOR NUNC PRO TUNC  
APPROVAL OF AN ASSET PURCHASE AGREEMENT  
AND TRANSFER OF CUSTOMERS

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DOCKET NO.  
06-00237

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ORDER APPROVING TRANSFER OF AUTHORITY  
AND CUSTOMER NOTIFICATION LETTER

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This matter came before Chairman Sara Kyle, Director Eddie Roberson and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on December 4, 2006 for consideration of the *Joint Application* filed on September 19, 2006 by Universal Access, Inc. ("UAI") and Vanco Direct USA, LLC ("Vanco") (together, "Applicants").

**The Joint Application**

On September 19, 2006, UAI<sup>1</sup> and Vanco<sup>2</sup> filed a *Joint Application* for *Nunc Pro Tunc* approval of the transfer of UAI customers to Vanco. Since August 2, 2004, Universal Access Global Holdings, Inc. ("Holdings"), its wholly-owned subsidiary, UAI, and each of UAI's wholly-owned subsidiaries, have been operating under the protection of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the "Bankruptcy Court").<sup>3</sup> The *Joint*

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<sup>1</sup> UAI was previously authorized to provide resold local and long distance telecommunications services granted by an Order issued in Docket No. 00-00105. However, on November 30, 2004, the certification of UAI to conduct business in the State of Tennessee as a public utility was revoked for failure to provide a surety bond or irrevocable letter of credit.

<sup>2</sup> Vanco is authorized to provide resold local and long distance services pursuant to an Order issued in Docket No. 05-00306 on August 14, 2006.

<sup>3</sup> *In Re: Universal Access Global Holdings, Inc., et al.*, U.S. Bankr. Ct., N. Dist. Ill., Eastern Div., No. 04 B 28747.

*Application* informed the Authority of a transaction whereby pursuant to an Asset Purchase Agreement (“Agreement”), Vanco acquired substantially all of the assets of UAI, including but not limited to UAI’s customer accounts in the State of Tennessee (the “Acquisition”). The Agreement was approved by the Bankruptcy Court.<sup>4</sup> According to the *Joint Application*, despite a reasonable exercise of prudence, Vanco was unaware of UAI’s customer presence in the State of Tennessee.<sup>5</sup> As a result, Vanco’s late-filed *Joint Application* seeks approval from the Authority to transfer this customer *nunc pro tunc*.

According to the *Joint Application*, UAI’s financial difficulties substantially limited its ability to compete effectively and hampered the company’s ability to obtain the resources required to fulfill customer requests and continue to provide services. UAI continued to provide service to its customers in several states until such time as Vanco’s certification to provide telecommunications services and the transfer of customers was approved in those states. The *Joint Application* states that the Acquisition did not change the rates, terms, and conditions of service that UAI customers receive, and that the Acquisition benefited UAI’s customers by providing them assurance that they would continue to receive the same services rendered previously to them. Therefore, the transfer of customers to Vanco will be seamless and transparent to Tennessee customers, and approval of the transfer is not detrimental to customers in the State of Tennessee. The Federal Communications Commission approved the transfer of authority of Universal Access, Inc. to Vanco Direct USA, LLC in an Order dated July 6, 2005 in WC Docket No. 05-187.

#### **The December 4, 2006 Authority Conference**

The Applicants submitted the *Joint Application* requesting approval for both the authorization to consummate a proposed transfer of authority and transfer of customer base

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<sup>4</sup> See Order of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, dated May 20, 2005 and attached as Exhibit “B” to the *Joint Application* for *nunc pro tunc* approval of an asset purchase agreement and transfer of customers.

<sup>5</sup> According to the October 4, 2006 Data Response provided by the company, Vanco acquired a total of one customer in the State of Tennessee from UAI.

transaction pursuant to Tenn. Code Ann. §§ 65-4-104 and 112 (2004), as well as the Authority's Rules and Regulations in effect or subsequently enacted. However, the TRA finds that Tenn. Code Ann. § 65-4-113 (2004) and Authority Rule 1220-4-2-.56(2)(d) apply to the transactions as described in the *Joint Application* and herein. Tenn. Code Ann. § 65-4-113(b) (2004) states:

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.

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

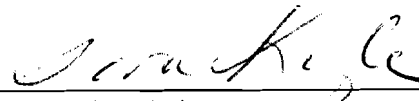
up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.


At the regularly scheduled Authority Conference held on December 4, 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 have demonstrated compliance 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. § 65-4-113 (2004), the panel voted unanimously to approve the transfer and approve the customer notification letter filed by the Applicants.

**IT IS THEREFORE ORDERED THAT:**

1. The transfer of authority from Universal Access, Inc. to Vanco Direct USA, LLC as discussed in the *Joint Application* and described herein is approved *nunc pro tunc*.
2. The revised customer notification letter filed on October 18, 2006, is approved pursuant to Authority Rule 1220-4-2-.56(2)(d).

  
Sara Kyle, Chairman

  
Eddie Roberson, Director

  
Pat Miller, Director