

**September 13, 2007**

**JOINT PETITION OF TELCOVE OF NASHVILLE, L.P.  
AND TELCOVE OPERATIONS, INC. FOR AUTHORITY  
TO COMPLETE A PRO FORMA REORGANIZATION,  
INCLUDING THE ASSIGNMENT OF ASSETS AND  
CUSTOMERS, SURRENDER OF OPERATING AUTHORITY  
AND A CHANGE IN THE NAME OF AN AUTHORIZED  
CARRIER**

**DOCKET NO.**  
**06-00318**

## ORDER APPROVING ASSIGNMENT OF ASSETS AND CUSTOMERS AND THE SURRENDER OF OPERATING AUTHORITY

This matter came before Chairman Sara Kyle, Director Eddie Roberson 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 April 30, 2007 for consideration of the petition requesting authorization for approval to complete a proposed pro-forma reorganization filed on December 20, 2006 and amended on April 13, 2007 (*“Joint Petition”*) by TelCove of Nashville, L.P. (“TelCove-Nashville”) and TelCove Operations, Inc. (“TelCove”) (together, “Petitioners”).

TelCove, a Delaware corporation with corporate offices in Canonsburg, Pennsylvania, is a wholly-owned direct subsidiary of Eldorado Acquisition Three, LLC (“Eldorado”), which is ultimately owned by Level 3 Communications, Inc. TelCove holds authorizations to provide telecommunications services in sixteen states, and through its corporate parent, Eldorado, is authorized to provide interstate and international telecommunication services by the Federal

Communications Commission (“FCC”). In Tennessee, TelCove is authorized to provide local and interexchange telecommunications.<sup>1</sup>

TelCove-Nashville is a Delaware corporation with principal offices in Canonsburg, Pennsylvania and a sister corporation to TelCove. TelCove-Nashville is also a wholly-owned subsidiary of Eldorado which is ultimately owned by Level 3 Communications, Inc. In Tennessee, TelCove-Nashville is authorized to provide resold local exchange and interexchange telecommunication services.<sup>2</sup> TelCove-Nashville also holds authorization to provide domestic interstate services from the FCC.

### **The Joint Petition**

The Petitioners seek approval to complete a series of intra-corporate transactions through which TelCove-Nashville’s business in Tennessee, including all of its Tennessee assets and customers, will be transferred to TelCove which will become the sole TelCove operating company in Tennessee. In the *Joint Petition*, the Petitioners also sought approval to change the name of TelCove to TelCove Operations, LLC instead of TelCove Operations, Inc. However, the Petitioners filed a supplement to their *Joint Petition* on April 11, 2007 stating that they were unable to register the name “TelCove Operations, LLC” with the Tennessee Secretary of State. On April 13, 2007, the Petitioners filed a letter withdrawing the request for a name change.<sup>3</sup>

According to the *Joint Petition*, the Petitioners intend to surrender the certificate of TelCove-Nashville and withdraw the applicable tariff after the proposed transfer. The

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<sup>1</sup> A Certificate of Public Convenience and Necessity was granted to Hyperion Communications of Tennessee, L.P. in Docket No. 98-00732 on December 6, 1999. On June 29, 2000, the Authority issued an Order granting the transfer of the authority of Hyperion Communications of Tennessee, L.P. to Adelphia Business Solutions Operations, Inc. in Docket No. 00-00271. On March 9, 2005, the Authority issued an Order granting approval of the petition of Adelphia Business Solutions of Nashville, L.P. and Adelphia Business Solutions Operations, Inc. to change names to TelCove of Nashville, L.P. and TelCove Operations, Inc. respectively in Docket No. 03-00458.

<sup>2</sup> Adelphia Business Solutions of Nashville, L.P., now TelCove of Nashville, L.P., was granted a Certificate of Public Convenience and Necessity in TPSC Docket No. 94-00661 on August 12, 1995.

<sup>3</sup> The April 13, 2007 filing withdrawing the request for a name change is in essence an amendment to the *Joint Petition* and is treated as such herein.

Petitioners state that the proposed transactions are entirely intra-corporate in nature, will not involve any change in ultimate ownership or control of any of the TelCove operating companies and will not affect any of the rates, terms or conditions under which their customers receive service in the State of Tennessee. Immediately following the transaction, TelCove-Nashville customers will continue to receive services under the TelCove brand name without any discontinuation of service or customer terminations. The Petitioners also provided a copy of the customer notification letter informing customers that they will be transitioned to TelCove.

Concerning the public interest, the *Joint Petition* states that the proposed transaction is in the public interest because it will allow the TelCove entities to streamline and rationalize their operations in a manner that will provide organizational and intra-corporate operational benefits which will enable the TelCove companies to compete and provide service more efficiently.

### **Findings and Conclusions**

Tenn. Code Ann. § 65-4-112(a) (2004) states:

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 other such public utility of like character shall be valid until approved by the authority, 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 a customer base, Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) provides:

- (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 April 30, 2007, the voting panel assigned to this docket found that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-112 (2004) because this transaction involves two public utilities and voted unanimously to grant approval of the *Joint Petition* based on the following findings:

1. That the proposed transaction will serve the public interest because it will enable the TelCove entities to streamline and consolidate their operations in a manner that will enable them to provide service more efficiently, thereby strengthening its competitive position in the Tennessee telecommunications market.

2. That TelCove's operations will continue to be managed by the same technical, operational and managerial personnel currently in place and TelCove customers will continue to receive their existing services at the same rates, terms and conditions.

3. That the customer notification letter complies with Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d).<sup>4</sup>

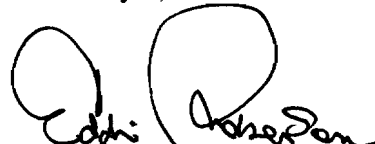
**IT IS THEREFORE ORDERED THAT:**

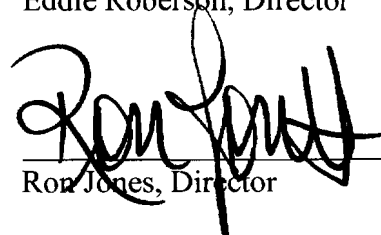
1. The transfer of assets and customers of TelCove of Nashville, L.P. to TelCove Operations, Inc., as described in the *Joint Petition*, is approved pursuant to Tenn. Code Ann. § 65-4-112 (2004).

2. The customer notification letter sent to TelCove-Nashville customers in accordance with Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) is approved.

3. The Certificate of Convenience and Necessity and tariff of TelCove-Nashville are cancelled effective upon notice to the Authority that the transfer of assets, including all of TelCove-Nashville's customers, has been completed.

  
Sara Kyle, Chairman

  
Eddie Roberson, Director

  
Ron Jones, Director

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<sup>4</sup> Director Jones also found that upon consummation of the transaction, TelCove-Nashville will no longer have any Tennessee customers or offer services in Tennessee.