

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 4, 2007

IN RE:

**JOINT PETITION OF EUREKA BROADBAND
CORPORATION, A.R.C. NETWORKS, INC. AND
BROADVIEW NETWORKS HOLDINGS, INC. FOR
APPROVAL OF THE INDIRECT TRANSFER OF
CONTROL OF A.R.C. NETWORKS, INC. TO
BROADVIEW NETWORKS HOLDINGS, INC.**

**DOCKET NO.
07-00057**

**ORDER APPROVING TRANSFER OF AUTHORITY
AND RELATED 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 April 16, 2007 for consideration of the *Joint Petition* for approval of the transfer of control of A.R.C. Networks, Inc. to Broadview Networks Holdings, Inc. filed on March 5, 2007 by Eureka Broadband Corporation ("Eureka Parent"), A.R.C. Networks, Inc. ("A.R.C."), and Broadview Networks Holdings, Inc. ("Broadview Holdings") (collectively, "Petitioners"). In addition, A.R.C. requests approval to participate in the financing arrangements of Broadview Holdings.

Eureka Parent is a Delaware corporation with corporate offices in New York, New York. Through its operating subsidiaries, Eureka Parent provides integrated communications solutions, including end-to-end voice and data communications solutions primarily to business customers in major markets in the northeastern United States and selected areas of Texas. Eureka Parent is not authorized to provide telecommunications services in Tennessee.

A.R.C., a subsidiary of Eureka, is a New York corporation with principal offices in Melville, New York. In Tennessee, A.R.C. is authorized to provide operator service and resell telecommunications services.¹

Broadview Holdings is a privately-held Delaware corporation with offices in Rye Brook, New York. Through its subsidiaries, Broadview Holdings provides interstate and international telecommunications services pursuant to authorizations from the Federal Communications Commission ("FCC") and provides network-based electronically integrated communications services to small and medium sized businesses in the Northeastern and Mid-Atlantic United States. Broadview Holdings is not authorized to provide telecommunications services in Tennessee.

The Joint Petition

The Petitioners request approval to consummate a proposed transfer of authority of A.R.C. and approval for A.R.C. to participate in certain existing and proposed financing arrangements of Broadview Holdings. According to the *Joint Petition*, Broadview Holdings and Eureka Parent entered into an Agreement and Plan of Merger dated February 23, 2007 whereby a newly created subsidiary of Broadview Holdings will merge with Eureka Parent with Eureka Parent emerging as the surviving entity. As a result of the transaction, Broadview Holdings will acquire control of A.R.C. After the transaction, A.R.C. will continue to provide services to its customers under the same name with no immediate change to its rates, terms or conditions of service, making the proposed transaction seamless and transparent to consumers in the State of Tennessee.

The Petitioners also request approval for A.R.C to participate in certain existing and proposed financing arrangements of Broadview Holdings. According to a data response received on March 21, 2007, although A.R.C. will be pledging its assets in connection with the financing arrangements of Broadview Holdings, ARC does not have any assets located in Tennessee. These financing arrangements amount to a total aggregate amount of up to \$450 million which consists of up to \$250 million in financing

¹ See *In re: Petition of A.R.C. Networks, Inc. d/b/a InfoHighway for Authority to Provide Resale Telecommunications in Tennessee*, Docket No. 02-01168, *Order* (December 2, 2002).

arrangements of Broadview Holdings and corporate bonds to be issued by Broadview Holdings with a total aggregate amount of up to \$200 million. The proceeds from the financing will be used to finance the acquisition of Eureka Parent and its subsidiaries, provide working capital, and for general corporate purposes.

Findings and Conclusions

The Petitioners request approval to consummate the transfer of authority pursuant to Tenn. Code Ann. § 65-4-112 (2004). However, the Authority finds that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-113 (2004) because control of a Tennessee-certificated entity is being transferred to a non-certificated entity.

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides as follows:

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.

Regarding the financing arrangements, 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 April 16, 2007, the voting panel assigned to this docket considered the transfer of authority and the financing transaction requested in the *Joint Petition* 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 Tenn. Code Ann. § 65-4-109 (2004) based on the following findings:

1. Tenn. Code Ann. § 65-4-113 (2004), rather than Tenn. Code Ann. § 65-4-112, applies to this transaction because the latter section applies to transactions between two public utilities, which is not true of the parties in this docket.

2. The FCC has granted approval for the transfer of authority, and federal approval is not required for the financing transaction according to the Petitioners' data response filed with this Authority on March 21, 2007.

3. The record demonstrates that Broadview Holdings has the technical, managerial and financial means to exercise control over the acquired regulated entity.

4. The transfer and related financing transaction further the public interest such that, but not limited to the fact, that the transfer will not reduce the number of providers in the state, and according to the Petitioners' representations, the transaction will create stronger competitors in Tennessee's telecommunications marketplace.

5. Tenn. Code Ann. § 65-4-109 (2004) applies to the financing transaction because A.R.C.'s obligation to serve as a guarantor of Broadview Holdings' indebtedness constitutes evidence of indebtedness payable in more than one year.

6. The financing transaction is being made in accordance with laws enforceable by this agency.

7. 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.

8. The burden of compliance with Tenn. Code Ann. § 65-4-109 (2004) is minimal, as such, compliance should be perfunctory given the telecommunications industry's movement to a competitive environment.

IT IS THEREFORE ORDERED THAT:

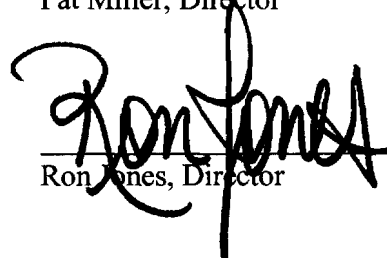
1. Eureka Broadband Corporation, A.R.C. Networks, Inc. and Broadview Networks Holdings, Inc. are authorized to enter into the financing transaction as described in the *Joint Petition* and discussed herein.

2. The transfer of authority of A.R.C. Networks, Inc. to Broadview Networks Holdings, Inc. as described in the *Joint Petition* and discussed herein is approved.

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 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