

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

November 28, 2007

IN RE:

**JOINT PETITION OF FIRST COMMUNICATIONS, LLC AND
GOES FC HOLDINGS, LLC FOR APPROVAL FOR
TRANSFER OF CONTROL**

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**DOCKET NO.
07-00175**

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Eddie Roberson, Director Pat Miller and Director Sara Kyle 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 20, 2007 for consideration of the *Joint Petition* of First Communications, LLC ("FCL") and Gores FC Holdings, LLC ("Gores FC") (collectively, "Petitioners") requesting authorization to transfer control of First Communications, Inc. ("FCI"), the parent company of FCL and Xtension Services, Inc. ("Xtension") to Gores FC, filed on July 17, 2007.

FCL is an Ohio company with principal offices in Akron, Ohio. FCL is a wholly-owned subsidiary of FCI, a corporation listed on the Alternative Investment Market of the London Stock Exchange. FCL is authorized to provide local, private line and long distance services to both business and residential customers in forty-nine states and holds domestic and international Section 214 authorizations from the Federal Communications Commission ("FCC"). FCL is authorized to provide resold interexchange telecommunications services in Tennessee.¹

Gores FC, a Delaware limited liability corporation, is ultimately controlled by the Gores Group, LLC (the "Gores Group") and its managing member, Alec E. Gores. The Gores Group is a

¹ See *In re: Application of First Communications, LLC to Provide Resold Interexchange Telecommunications Services in Tennessee*, Docket No. 06-00213, *Order Granting Authority*, p. 1 (December 5, 2006).

private investment firm that focuses its investments in the technology and telecommunications sectors.

The Joint Petition

Pursuant to the terms of an agreement between Gores FC and FCI, the Petitioners request approval for Gores FC to appoint a majority of the FCI board of directors, giving it *de facto* control of FCI. Gores FC currently holds a 9.9% voting interest in FCI. The agreement permits Gores FC to increase its interest to 13.1% by converting its non-voting shares of common stock to voting shares and increasing its voting interest in FCI to 35.6% through certain warrants, if fully exercised.

The Petitioners assert that the transaction will serve the public interest by providing FCL and Xtension access to additional financial and operational resources that will help strengthen their position in the telecommunications marketplace. According to the *Joint Petition*, the proposed transaction will be transparent to customers and there will be no discontinuance, reduction, loss or impairment of service to customers. Per a July 30, 2007, data Response, the Petitioners filed for FCC approval of the transfer of authority on July 24, 2007.

Findings and Conclusions

The Petitioners request approval to consummate the transfer of authority pursuant to Tenn. Code Ann. § 65-4-112 (2004). 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(a) (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:

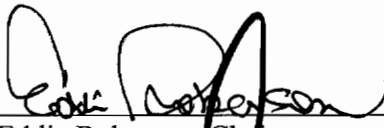
Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the 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.

At the regularly scheduled Authority Conference held on August 20, 2007, the voting panel assigned to this docket considered the transfer of authority requested in the *Joint Petition* and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113 (2004) contingent upon FCC approval based on the following additional findings:


1. The transaction will be in the public interest.
2. The transaction will be transparent to customers.
3. No customer notice is required.

IT IS THEREFORE ORDERED THAT:

The transfer of authority of First Communications, Inc., the parent of First Communications, LLC and Xtension Services, Inc. to Gores FC Holdings, LLC as described in the *Joint Petition* and discussed herein is approved contingent upon approval by the Federal Communications Commission.²


Eddie Roberson, Chairman

 11-26-07
Pat Miller, Director


Sara Kyle, Director

² On September 14, 2007, the Petitioners filed with the Authority a copy of the FCC Public Notice approving this transfer of control, effective September 7, 2007.