

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 11, 2008**

**IN RE:**

**JOINT PETITION OF BROADVIEW NETWORKS  
HOLDINGS, INC., ATX LICENSING, INC. AND A.R.C.  
NETWORKS, INC. FOR INDIRECT TRANSFER OF  
CONTROL**

**DOCKET NO.  
07-00221**

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

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This matter came before Chairman Eddie Roberson, Director Sara Kyle 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 December 3, 2007 for consideration of the *Joint Petition* of Broadview Networks Holdings, Inc. (“Broadview Holdings”) and its indirect subsidiaries, ATX Licensing, Inc. (“ATX”) and A.R.C. Networks, Inc. (“A.R.C.”), (collectively, “Petitioners”) filed on September 24, 2007.

Broadview Holdings is a privately-held Delaware corporation and the parent of several subsidiaries which provide telecommunications services in multiple states, including Virginia.

ATX is an indirect subsidiary of Broadview Holdings and holds authorization to provide competitive telecommunications services in approximately forty states. ATX is also authorized to provide interstate and international services by the Federal Communications Commission (“FCC”). In Tennessee, ATX is authorized to provide interexchange telecommunications services<sup>1</sup> and has approximately thirty-eight<sup>2</sup> customers.

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<sup>1</sup> See *In re: Petition for Approval of the Indirect Transfer of Control of ATX Licensing, Inc. to Leucadia Corporation*, Docket No. 05-00093, *Order Approving Transfer of Authority*, p. 3 (September 29, 2005), where the Authority approved a transfer of authority previously granted to ATX Telecommunications Services, Ltd. in Docket No. 00-00089 to ATX, *nunc pro tunc*.

<sup>2</sup> *Data Response*, p. 3 (October 23, 2007).

A.R.C. is another indirect subsidiary of Broadview Holdings and holds authorization to provide competitive telecommunications services in approximately thirty states. A.R.C. also holds authorization to provide interstate and international services from the FCC. In Tennessee, A.R.C. is authorized to provide interexchange telecommunications services<sup>3</sup> and has approximately forty-seven customers.<sup>4</sup>

### **The Joint Petition**

The Petitioners request approval to participate in certain financing arrangements of Broadview Holdings that may ultimately result in the transfer of ownership of Broadview Holdings and the indirect transfer of control of its subsidiaries, Broadview Networks, ATX and A.R.C. (collectively “Licensees”), as well as approval for the resulting transfer of authority.

Broadview Holdings plans to issue new stock in an aggregate amount of up to \$500,000,000 through either a private placement or a public offering of Broadview Holdings stock. As a result of the anticipated stock issuance, ownership of Broadview Holdings may be dispersed among multiple new shareholders and control of Broadview Holdings, its subsidiaries and their respective Boards of Directors may be relinquished by its current owners.

The largest of the current owners of Broadview Holdings are Baker Capital which controls approximately 15% of its shares and MCG Capital Corporation which controls approximately 47%. Following the stock issuance, it is not anticipated that any new shareholder would own 10% or more of Broadview Holdings, although Baker Capital and MCG Capital Corporation may each retain a 10% or greater stake in Broadview Holdings.

The Licensees also propose to participate in certain other financing transactions whereby Broadview Holdings will incur additional debt obligations of up to \$100,000,000. Petitioners anticipate that the new financing arrangements will involve long-term loans from institutional lenders, issuance of

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<sup>3</sup> See *In re: Petition of A.R.C. Networks, Inc. d/b/a Infohighway for Authority to Provide Resale Telecommunications Services in Tennessee*, Docket No. 02-01168, Order (December 2, 2002).

<sup>4</sup> *Data Response*, p. 3 (October 23, 2007).

corporate notes or a mix of these financing vehicles. Petitioners anticipate that Licensees will incur this debt either as co-borrowers or guarantors of Broadview Holdings' debt, and that the debt will be secured by liens on Licensees' assets. Other than customers, the Licensees do not have any assets in Tennessee.<sup>5</sup>

Although the proposed transaction may change the underlying ownership of Broadview Holdings, Petitioners do not anticipate any change in the day-to-day management and operations of Broadview Holdings or its licensed subsidiaries. It is anticipated that current management will remain in place, and the Licensees will continue to offer service with no change in the rates, terms or conditions of service, thereby making the transition seamless and transparent to customers. The Petitioners state that the transaction will result in greater resources and flexibility to implement their business plans and better their service offerings for the benefit of Tennessee customers.

### **Findings and Conclusions**

The Petitioners request approval for a financing transaction pursuant to Tenn. Code Ann. § 65-4-109 (2004) and a transfer of authority pursuant to Tenn. Code Ann. § 65-4-112 (2004). The Authority finds that the transfer of authority 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.

The Petitioners' request for approval to participate in a financing transaction is governed by Tenn. Code Ann. § 65-4-109 (2004) which 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.

Regarding the transfer of authority, 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:

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<sup>5</sup> *Id.*

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 December 3, 2007, the voting panel assigned to this docket considered the *Joint Petition* and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113 (2004) contingent upon the FCC's approval, and the financing transactions pursuant to Tenn. Code Ann. § 65-4-109 (2004), based on the following findings:

1. The proposed financing transactions are subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004) and are being made in accordance with laws enforceable by this agency.
2. The financing transactions are in the public interest because they will provide Broadview Holdings and its subsidiaries access to additional capital and encourage competition.
3. The transfer of authority, as described in the *Joint Petition*, is in the public interest.
4. The transfer will be transparent to Tennessee customers.
5. No customer notice is required.<sup>6</sup>

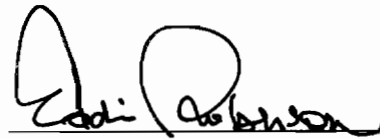
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<sup>6</sup> Director Jones made the following additional findings:

- (1) The Tennessee-certificated entities that will participate in the financing transaction have Tennessee customers.
- (2) The Petitioners have stated that they have filed similar petitions in other states and have not filed for federal approval of the financing transaction.
- (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.
- (4) 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. The transfer of authority of ATX Licensing, Inc. and A.R.C. Networks, Inc. as described in the *Joint Petition* and discussed herein is approved contingent upon approval by the Federal Communications Commission.
2. The Applicants shall file with the Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer of authority.
3. Broadview Networks Holdings, Inc., ATX Licensing, Inc. and A.R.C. Networks, Inc. are authorized to participate in the financing transactions as described in the *Joint Petition* and discussed herein.
4. The Authority's approval of this transaction should not be used by any party for the purpose of inferring an analysis or assessment of the risks involved. Additionally, this decision is not intended to create any liability on the part of this Agency, State or other political subdivision thereof.



Eddie Roberson, Chairman



Sara Kyle, Director



Ron Jones, Director