

T.R.A. DOCKET ROOM

October 18, 2007

*Via Overnight Delivery*

Ms. Sharla Dillon, Docket Room Manager  
Tennessee Regulatory Authority  
460 James Robinson Parkway  
Nashville, TN 37243-0505

Attention: Jerry Kettles, Chief, Economic Analysis & Policy Division  
Mr. Carlos Black

**Re: Docket 07-00226: Joint Application of PAETEC Communications, Inc. and US LEC of Tennessee Inc. for Approval of the Intra-Corporate Merger; Transfer of Authority to Provide Local Exchange and Exchange Access Service; and Cancellation of US LEC's Authority to Provide Telecommunications Services**

**RESPONSE TO DATA REQUEST NO. 1**

Dear Ms. Dillon:

On behalf of PAETEC Communications Inc. ("PAETEC") and US LEC of Tennessee Inc. ("US LEC," collectively with PAETEC, the "Applicants"), and as required by the Tennessee Regulatory Authority's ("TRA" or "Authority") letter of October 12, 2007 ("Data Request No. 1"), the undersigned hereby submit this letter response to Data Request No. 1 (the "Response").

Specifically, this package contains the original Response; thirteen (13) filing copies of this Response; and an extra copy of the Response to be date-stamped and returned in the enclosed self-addressed, stamped envelope. Please note that Exhibit One to this Response is filed under seal; the original and all copies of that Exhibit are in sealed envelopes.

Below are the Applicants' responses to each question in Data Request No. 1; the question numbers correspond to the questions as numbered in Data Request No. 1:

**Question 1: Have the Applicants filed similar applications or notices in other states? If so, provide a listing of states and action taken.**

Docket No. 07-00226  
Responses to Data Request No. 1  
October 18, 2007  
Page 2

**Response:** On or about the time that the above-referenced application (the “Application”) was filed with the Authority, the Applicants submitted similar applications in the following jurisdictions: Alabama; Delaware; Washington, DC; Florida; Georgia; Indiana; Kentucky; Louisiana; Maryland; Mississippi; New Jersey; New York; Ohio; Pennsylvania; South Carolina; Tennessee; Texas; and West Virginia. Please note that in some of the States, each of US LEC and PAETEC currently hold authority to provide exactly the same telecommunications services; consequently, the applications for those states do not include requests to assign or grant to PAETEC any additional authority. Those applications remain pending.

Following the submission to the FCC described in response to Question 3, a notice will be submitted to the North Carolina Utilities Commission (“NCUC”). Additionally, pursuant to the advice of the NCUC’s staff, a notice surrendering US LEC of North Carolina Inc.’s authority to provide telecommunications services in that State will be filed *after* closing of the proposed intra-corporate merger.

**Question 2:** Have the Applicants filed a similar application with the FCC? If so, list any action taken and the associated docket number. If a schedule to complete the review of your petition has been established by the FCC, provide such with your response.

**Response:**

A. Intra-Corporate Merger and Transfer of Authority. No application for FCC approval of the proposed intra-corporate merger and assignment of US LEC’s authority to provide local exchange and exchange access services is required. The subject transaction involves only the merger of one wholly-owned indirect subsidiary of PAETEC Holding Corp. (“Parent”) into another wholly-owned indirect subsidiary of the same company. Because the same persons who currently own stock in and exercise control over US LEC (the non-surviving subsidiary) will continue to own all stock in and exercise control over the surviving entity and all of its assets and operations, the effect of this transaction on the parties’ domestic and international Section 214 authorizations is “an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests[.]” See 47 C.F.R. § 63.24(d), Note 2. The proposed transaction thus considered by the FCC to be *pro forma*. *Id.* The FCC does not require prior approval for *pro forma* assignments or transfers of control affecting domestic or international Section 214 authority. See 47 C.F.R. §§ 63.03(d)(1); 63.24(d), (f)(1). The FCC’s rules require only that PAETEC notify the FCC within

Docket No. 07-00226  
Responses to Data Request No. 1  
October 18, 2007  
Page 3

thirty (30) days following the completion of the proposed transaction. *See* 47 C.F.R. § 63.24(f)(2).

B. Discontinuance of Service. The FCC's rules for discontinuance of international telecommunications services require that the carrier notify all affected customers no less than 60 days in advance, and thereafter notify the FCC. *See* 47 C.F.R. § 63.19(a). In addition to customer notice, an application is required for the discontinuance of interstate domestic services by non-dominant carriers such as US LEC; generally, such applications are deemed automatically granted on the thirty-first (31<sup>st</sup>) day after filing with the FCC. *See* 47 C.F.R. § 63.71(b), (c). Because the proposed closing date of the intra-corporate merger is not until January 1, 2008, the notice and application required for US LEC's international and domestic authority, respectively, have not yet been filed. Copies of the required FCC filings will be provided to the Authority following their submission to the FCC.

**Question 3:** As required by FCC Rules in CC Docket No. 011-257, provide a copy of the self-certification letter filed with the FCC regarding customer transfers.

**Response:** Because the proposed closing date of the intra-corporate merger is not until January 1, 2008, the letter regarding customer transfers has not yet been filed with the FCC. Copies will be provided to the Authority after the letter is filed with the FCC.

**Question 4:** Provide the number of customers that PAETEC Communications, Inc. ("PAETEC") and US LEC of Tennessee Inc. ("US LEC") currently have in Tennessee.

**Response:** Attached hereto as Exhibit One is US LEC's response to Question 3. Exhibit One is filed under seal in the attached envelope marked "CONFIDENTIAL." Exhibit One and the information therein contain commercially sensitive information regarding the Applicants' Tennessee operations that is confidential, proprietary, and non-public information ("Confidential Information"). Disclosure of the Confidential Information would have a deleterious effect with respect to the Applicants' competitive position, specifically as to its operations in the Tennessee communications marketplace. Disclosure of the Confidential Information would provide competitors with inside information about the Applicants' Tennessee operations that would otherwise not be available to them. US LEC therefore requests that Exhibit One provided to the Authority be treated as confidential during and after the proceedings in the above-captioned matter.

Docket No. 07-00226  
Responses to Data Request No. 1  
October 18, 2007  
Page 4

**Question 5:** Will all US LEC customers be transferred to PAETEC?

**Response:** Yes. All US LEC customers will be transferred to PAETEC, except for any US LEC customers who choose to change carriers in time to complete the transition to the third-party carrier prior to closing of the intra-corporate merger.

**Question 6:** Provide a signed verification from US LEC, their attorney, or legal party representative verifying that the information contained in the Application is true and correct to their best knowledge, information, and belief.

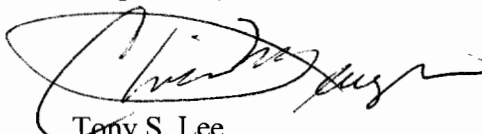
**Response:** A verification executed by one of US LEC's undersigned attorneys is attached hereto as Exhibit Two.

**Question 7:** Concerning TRA Rule 1220-4-2-.56(2)(d)(4), please explain how the customer notice in Exhibit B of the Application informs transferred customers that they will receive a thirty-day written notice of any rate increase that may affect their service up to ninety days from the date of the transfer.

**Response:** The form of customer notice originally submitted with the Application as Exhibit B was a generic form, and lacked the Tennessee-specific requirements contained in TRA Rule 1220-4-2-.56(2)(d)(4). A revised form of the notice, to be sent to Tennessee customers and informing the customers that they will receive the required thirty-day written notice is attached as Exhibit Three hereto.

Should you have any questions or require additional information in connection with this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony S. Lee", is written over a horizontal line.

Tony S. Lee  
Grace R. Chiu  
Christine McLaughlin

**EXHIBIT ONE**

**Response to Question 4**

**FILED UNDER SEAL**

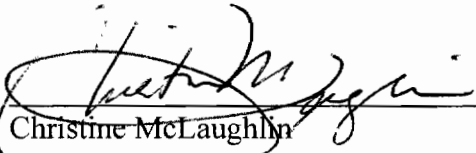
**EXHIBIT TWO**

**VERIFICATION**

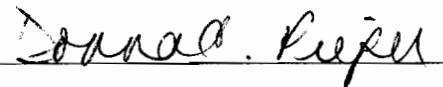
DISTRICT OF COLUMBIA

§  
§  
§

I, Christine McLaughlin, an attorney with the law firm of Venable LLP, hereby verify under penalty of perjury that I represent US LEC of Tennessee Inc. ("US LEC") in connection with the application filed for the Tennessee Regulatory Authority's approval of an intra-corporate merger, assigned Docket No. 07-00226 (the "Application"); that I took part in the preparation of the Application and know the contents thereof; and that the information contained in the Application is true and correct to the best of my knowledge, information and belief.

  
Christine McLaughlin

Subscribed and sworn to before me on this 18th day of October, 2007.



My commission expires: 6/30/2009

**Donna C. Pieper**  
Notary Public, District of Columbia  
My Commission Expires 6-30-2009

**EXHIBIT THREE**





**PAETEC**

## **US LEC - PAETEC MERGER**

Dear Valued Customer:

As you have likely heard, US LEC of Tennessee Inc. has become part of the PAETEC family in March 2007, and now does business under the name "PAETEC Business Services." In order to simplify PAETEC's corporate structure and maximize the benefits that we offer you, we are now planning to merge your US LEC company and its affiliates into a single unified company, PAETEC Communications, Inc. ("PAETEC"). We expect this change to occur on or about January 1, 2008, pending all necessary regulatory approvals. Because this will technically result in a transfer of your service to another provider, we are required to provide certain information to you.

US LEC and PAETEC will work to ensure that the transfer of your services to PAETEC is seamless and transparent to you. Your current services will continue to be provided under the same rates, terms, and conditions that you currently enjoy with US LEC. Your service agreement with US LEC will remain in force, and will be honored by PAETEC. Your account manager will remain the same. You will be notified of any future changes in rates, terms, and conditions of service as required by law; however, no such changes are anticipated. PAETEC will be responsible for handling any questions or issues prior to and during the transfer. PAETEC will also be responsible for any carrier change charges that may be associated with the transfer. If you have placed a "freeze" on the current services, the freeze will be lifted (if needed) and your services will be transferred to PAETEC. As the service subscriber you must contact your local service provider if such provider is not PAETEC, to re-establish freeze protection for your services after the date of final transfer. As required by state regulations, we will provide you a thirty (30) day written notice of any rate increase that may affect your service up to ninety (90) days from the date of the transfer.

As always, you have the right to choose a different carrier for your services. If you do take steps to transfer your service to a different carrier you will need to make sure that the new service is ordered and provisioned no later than December 31, 2007. Please note that choosing to terminate services may result in early termination charges being assessed per your US LEC contract. If you are a customer of US LEC on the date of the transfer and you have not informed US LEC that you have made arrangements to switch to a carrier other than PAETEC, your services will automatically be transferred to PAETEC.

US LEC and PAETEC are committed to providing you with outstanding customer service, as well as personalized business solutions aimed to meet all of your communications needs. We look forward to continuing the mutually beneficial relationship that you have built with US LEC. If you have any questions, please do not hesitate to contact your account team to learn more about our company and service offerings. Please call us toll free at 1-877-340-2600 or visit the PAETEC website at [www.paetec.com](http://www.paetec.com).

Cordially,

**John Baron**

**Chief Marketing and Training Officer and Executive Vice President**