

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**January 11, 2008**

**IN RE:**

**JOINT APPLICATION FOR APPROVAL TO TRANSFER  
CONTROL OF MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC. TO PAETEC HOLDING CORPORATION  
AND FOR MCLEODUSA TO PARTICIPATE IN CERTAIN  
DEBT FINANCING ARRANGEMENTS**

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**DOCKET NO.  
07-00229**

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

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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 November 6, 2007 for consideration of the *Joint Application* for approval to transfer control of McLeodUSA Telecommunications Services, Inc. (“McLeodUSA”) to PAETEC Holding Corp. (“PAETEC”) and for McLeodUSA Incorporated (“McLeodUSA Parent”) to participate in certain financing arrangements filed on October 2, 2007 by McLeodUSA Parent and PAETEC (together, “Applicants”).

McLeodUSA is a wholly-owned subsidiary of McLeodUSA Holdings, Inc., which is in turn a wholly-owned subsidiary of McLeodUSA Parent. McLeodUSA is authorized to provide domestic interstate and international telecommunications services by the Federal Communications Commission (“FCC”) and provides integrated communications services, including local services, in twenty Midwest, Southwest, Northwest and Rocky Mountain states. In Tennessee, McLeodUSA is

authorized to provide resold and facilities-based local exchange and intrastate interexchange telecommunications services<sup>1</sup> and operator services.<sup>2</sup>

PAETEC provides communications solutions to medium-sized and large businesses and institutions through its operating subsidiaries. In Tennessee, PAETEC provides services through its operating subsidiaries, PAETEC Communications, Inc. and US LEC of Tennessee, Inc. PAETEC Communications, Inc. and US LEC of Tennessee, Inc. have also filed an application with the Authority seeking approval for an intra-corporate merger.<sup>3</sup> The parties have requested that the Authority stay action on that application until they file an amendment detailing minor changes to the proposed transaction.<sup>4</sup>

### **The Joint Application**

The Applicants request approval of a transaction whereby, pursuant to an agreement and plan of merger dated September 17, 2007, a newly created subsidiary of PAETEC will merge with McLeodUSA Parent, with McLeodUSA Parent surviving. Subsequent to the transaction, McLeodUSA Parent will become a direct, wholly-owned subsidiary of PAETEC, and McLeodUSA will become an indirect, wholly-owned subsidiary of PAETEC. As a consequence of the transfer of control, McLeodUSA, as a new subsidiary of PAETEC, will be required to participate in PAETEC's existing and proposed debt financing arrangements. Specifically, Applicants request approval for McLeodUSA to (1) guarantee the obligations of PAETEC, as borrower under senior secured credit facilities of \$550,000,000 aggregate principal amount, (2) grant a security interest in all of its assets to secure all amounts owing under the

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<sup>1</sup> See *In re: Joint Application of McLeodUSA Telecommunications Services, Inc. and Caprock Telecommunications Corp. for Authority to Transfer Certificate of Public Convenience and Necessity*, Docket No. 00-00906, *Order Approving Transfer of Authority* (January 24, 2001).

<sup>2</sup> See *In re: Application to Provide Operator Services and/or Resell Telecommunications Services in Tennessee Pursuant to Rule 1220-4-2-.57*, Docket No. 96-01632, *Order* (March 25, 1997).

<sup>3</sup> See *In re: 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 Service*, Docket No. 07-00226.

<sup>4</sup> See *In re: 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 Service*, Docket No. 07-00226, Correspondence from Tony S. Lee, Grace R. Chiu and Christine McLaughlin (November 1, 2007).

credit facilities, (3) guarantee the obligations of PAETEC under the \$300,000,000 aggregate principal amount 9.5% Senior Notes (“Notes”) due 2015 and (4) incur, guarantee and/or secure additional borrowings of up to \$500,000,000 of additional indebtedness in the form of incremental term loans and additional notes, under the credit agreement governing the credit facilities and under the indenture that governs the terms of the Notes. In a Data Response received on October 16, 2007, the Applicants state that approximately 15.8 miles of dark fiber is the only Tennessee asset that McLeodUSA will pledge as collateral for the debt.

According to the *Joint Application*, although PAETEC’s acquisition of McLeodUSA Parent will result in a change in the ultimate ownership and control of McLeodUSA, no transfer of certificate, assets or customers will occur as a result of the transfer of authority. McLeodUSA will continue to offer its current services with no change in the rates, terms or conditions of service, thereby making the transfer of authority seamless and virtually transparent to customers in Tennessee.

Regarding the public interest, the Applicants state that the proposed transaction will strengthen the competitive position of their respective subsidiaries by enhancing their respective service offerings and providing more advanced telecommunications services to a broader customer base, thereby benefiting their Tennessee customers.

### **Findings and Conclusions**

The Applicants request approval to consummate the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113(a) (2004) and to participate in certain debt financing transactions pursuant to Tenn. Code Ann. § 65-4-109 (2004). 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.

Regarding the request for approval to participate in certain debt financing transactions, 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 November 6, 2007, the voting panel assigned to this docket considered the transfer of authority requested in the *Joint Application* and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113 (2004) contingent upon FCC approval and to approve the related financing transaction pursuant to Tenn. Code Ann. § 65-4-109 (2004) based on the following findings:

1. The transfer of authority is in the public interest, will be transparent to customers and no customer notice is required.
2. Tenn. Code Ann. § 65-4-113 (2004) applies to this transaction.
3. The financing transaction is subject to the approval of this Authority pursuant to Tenn. Code Ann. § 65-4-109 (2004).
4. The financing transaction is being made in accordance with laws enforceable by this Agency.


5. The proposed transaction is in the public interest because it enhances the Applicants' service offerings and provides more advanced telecommunications services to a broader customer base.<sup>5</sup>

**IT IS THEREFORE ORDERED THAT:**

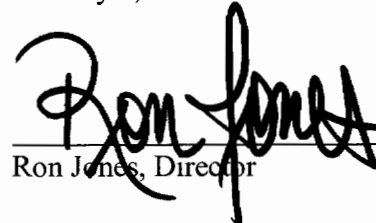
1. The transfer of authority of McLeodUSA Telecommunications Services, Inc. to PAETEC Holding Corporation as described in the *Joint Application* and discussed herein is approved.

2. McLeodUSA Telecommunications Services, Inc. is authorized to participate in the debt financing arrangements described in the *Joint Application* and discussed herein.

3. The Authority's approval of this transaction should not be used 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, the State of Tennessee or any political subdivision thereof.

  
Eddie Roberson, Chairman

  
Sara Kyle, Director

  
Ron Jones, Director

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<sup>5</sup> Director Jones made the following additional findings:

- (1) The proposed financing transaction is expected to affect the Tennessee assets of Tennessee-certificated entities.
- (2) The Applicants have stated that they have filed similar petitions in other states and federal approval of the debt refinance is not required.
- (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.