

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 17, 2007

IN RE:)	
)	
PETITION OF SOUTHERN DIGITAL NETWORK, INC. D/B/A)	DOCKET NO.
FDN COMMUNICATIONS AND NUVOX COMMUNICATIONS,)	07-00231
INC. FOR APPROVAL OF AN INTERNAL CORPORATE)	
REORGANIZATION AND TRANSFER OF CUSTOMER BASE)	

ORDER APPROVING AN INTERNAL CORPORATE REORGANIZATION
AND TRANSFER OF CUSTOMER BASE

This matter came before Director Pat Miller, 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 *Petition of Southern Digital Network, Inc. d/b/a FDN Communications and NuVox Communications, Inc. for Approval of an Internal Corporate Reorganization of an Authorized Telecommunications Provider and Transfer of Customer Base* ("Petition") filed by Southern Digital Network, Inc. d/b/a FDN Communications ("SDN") and NuVox Communications, Inc. d/b/a NuVox Communications ("NuVox") (together "Petitioners") on October 3, 2007.

NuVox is a subsidiary of NuVox, Inc. and provides interexchange and competitive local exchange telecommunications services in several states. In Tennessee, NuVox is authorized to provide competitive local exchange and interexchange telecommunications¹ and has approximately 3,231 Tennessee customers according to its October 17, 2007 Data Response.

¹ See *In re: Application of TriVergent Communications, Inc. to Provide Competing Local and Interexchange Telecommunications Services in the State of Tennessee*, Docket No. 99-00806, *Order Granting Certificate of Public Convenience and Necessity* (February 22, 2000). Also see *In re: Petition for Approval of the Amendment to the Interconnection Agreement Negotiated between BellSouth Telecommunications, Inc. and TriVergent Communications, Inc. Pursuant to the Telecommunications Act of 1996*, Docket No. 01-01095, *Order Approving Amendment to the Interconnection Agreement* (March 28, 2002) where the Authority approved TriVergent Communications Inc.'s name change to NuVox Communications, Inc.

SDN, also a subsidiary of NuVox, Inc., provides voice and data services to business customers and is authorized to provide interexchange and competitive local exchange telecommunications services in several states. In Tennessee, SDN is authorized to provide competitive local exchange and interexchange telecommunications services² and has approximately forty-two customers. On August 14, 2007, the TRA approved a transfer of authority of SDN to NuVox, Inc.³

The Petition

The Petitioners seek approval to consolidate the operating subsidiaries of NuVox, Inc. in Tennessee into a single entity by merging SDN with and into NuVox, with NuVox emerging as the surviving corporation and assuming all of SDN's assets and operations. The transaction will be entirely transparent to existing NuVox customers, and SDN customers will continue to receive their existing services at the same rates, terms and conditions of service with the only change being that NuVox will be their new service provider. NuVox will provide service to its existing customers as well as the former SDN customers pursuant to NuVox's existing authorization and will file amended tariffs to include both all grandfathered legacy SDN services and all legacy SDN services which will be marketed by NuVox in the future.

NuVox will provide advance written notice to the affected customers at least thirty days prior to the transfer. In their October 17, 2007 *Data Response*, the Petitioners requested a waiver of TRA Rule 1220-4-2-.56(2)(d)(4) because their customer notification letter was designed for use in several states and filed with the FCC. The Petitioners also asserted that the requirement is moot because they are committing not to request a rate increase within ninety days of the transfer. After consummation of the reorganization, SDN will cancel or withdraw its tariffs and surrender its

² See *In re: Petition of Southern Digital Network, Inc. d/b/a FDN Communications for CCN to Provide Competing Local Telecommunications Services*, Docket No. 04-00095, *Initial Order Granting Certificate Of Public Convenience And Necessity* (July 23, 2004).

³ See *In re: Petition of FDN Holdings, LLC, Southern Digital Network, Inc. d/b/a FDN Communications and NuVox, Inc. for Approval of a Transfer of Control of an Authorized Telecommunications Provider*, Docket No. 07-00078, *Order Approving Petition* (August 14, 2007).

certificate upon notice to the Authority that the transfer has been completed and SDN customers have been transferred to NuVox. The Petitioners state that the proposed transaction is in the public interest because the proposed internal reorganization will simplify NuVox, Inc.'s corporate structure, streamline its operations in Tennessee, eliminate administrative redundancy and improve the company's overall efficiency, which will enhance the company's ability to compete in Tennessee and elsewhere.

Findings and Conclusions

The Petitioners request approval to consummate the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113(a) (2004). The Authority finds that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-112 (2004) because this transaction involves two Tennessee-certificated public utilities.

Tenn. Code Ann. § 65-4-112(a) (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

Regarding the transfer of a customer base, Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) provides:

- (d) In the case of a transfer of a customer base between two or more telecommunications service providers, the Authority, upon petition by the acquiring telecommunications service provider, may deem that sufficient notice has been given and approval received from the affected customers when the following criteria are met:
 - 1. The acquiring telecommunications service provider shall provide the Authority a copy of the self-certification letter it shall file with the Federal Communications Commission ("FCC"), as required in CC Docket No. 00-257, certifying that the customer transfer is in compliance with all FCC regulations governing such transactions.
 - 2. A notification letter, pre-approved by the Authority, shall be mailed by the current provider of telecommunications service to its customers describing the customer transfer and explaining that unless

the customer selects another telecommunications service provider, the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a date specified in the notification letter. The notification letter shall be mailed by U.S. First Class Postage, with the logo or name of the current provider displayed on both the letterhead and the exterior envelope, no less than thirty (30) days prior to the actual customer transfer. For good cause shown, the Authority may waive any requirement of this part or order any requirement thereof to be fulfilled by the acquiring provider. Good cause includes, but is not limited to, evidence that the current provider is no longer providing service in Tennessee.

3. The acquiring telecommunications service provider agrees to pay any fees charged to the customer associated with changing service to the acquiring telecommunications service provider. The notification letter required in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.
4. The acquiring telecommunications service provider agrees to provide to the affected customers a thirty (30) day written notice of any rate increase that may affect their service up to ninety (90) days from the date of the transfer of customers. The notification letter mentioned in 1220-4-2-.56(2)(d)(2) shall inform the customer of this provision.

At the regularly scheduled Authority Conference held on November 6, 2007, the voting panel assigned to this docket found that the customer notification letter provided by the Petitioners, while not written word for word with the language of the rule, conforms to the requirements of Tenn. Comp. R. & Regs.1220-4-2-.56(2)(d). The panel voted unanimously to approve the *Petition* contingent upon the filing of the FCC self-certification letter as required by Tenn. Comp. R. & Regs.1220-4-2-.56(2)(d)(1).

IT IS THEREFORE ORDERED THAT:

1. The transfer of assets and customers of Southern Digital Network, Inc. d/b/a FDN Communications to NuVox Communications, Inc. d/b/a NuVox Communications as described in the *Petition* is approved pursuant to Tenn. Code Ann. § 65-4-112 (2004) contingent upon the filing of the Federal Communications Commission self-certification letter required by the TRA.

2. The customer notification letter proposed to be sent to the customers of Southern Digital Network, Inc. d/b/a FDN Communications is approved as being in accordance with Tenn.

Comp. R. & Regs. 1220-4-2-.56(2)(d).

3. The Certificate of Convenience and Necessity and tariffs of Southern Digital Network, Inc. d/b/a FDN Communications are cancelled effective upon notice to the Authority that the transfer of assets, including all of the customers of Southern Digital Network, Inc. d/b/a FDN Communications has been completed.

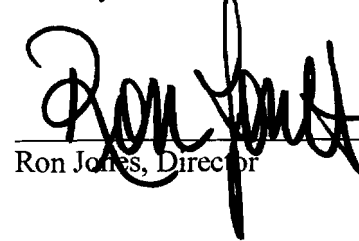


11-30-07

Pat Miller, Director



Sara Kyle, Director



Ron Jones, Director