

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 12, 2008

IN RE:

**PETITION OF DIECA COMMUNICATIONS, INC. FOR
APPROVAL TO ENCUMBER UTILITY PROPERTY**

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**DOCKET NO.
08-00033**

ORDER APPROVING FINANCING TRANSACTION

This matter came before Director Tre Hargett, 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 April 7, 2008 for consideration of the *Petition of DIECA Communications, Inc. for Approval to Encumber Utility Property* ("Petition") filed by DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad" or "Petitioner") on February 29, 2008.

Covad is a Virginia Corporation and a wholly-owned subsidiary of Covad Communications Group, Inc. ("CCGI"). Covad provides integrated voice and data communications and has broadband services available in forty-four states. Covad is authorized to provide international and domestic interstate telecommunications services as a non-dominant carrier by the Federal Communications Commission ("FCC") and is authorized to provide intrastate telecommunications services in Tennessee.¹ The Authority recently approved a transfer of the control of Covad to CCGI Holding Corporation ("CCGI Holding"), the parent of CCGI.² According to the *Petition*, the

¹ See *In re: Application of DIECA Communications for a Certificate of Convenience and Authority to Provide Switched and Resold Local Exchange and Exchange Access Service within Tennessee*, Docket No. 99-00823, *Order Granting Certificate of Public Convenience and Necessity* (May 22, 2000).

² See *In re: Joint Petition of DIECA Communications, Inc. and CCGI Holding Corporation for Approval of an Indirect Transfer of Control of DIECA Communications, Inc. to CCGI Holding Corporation*, Docket No. 07-00276, *Order Granting Petition for Clarification and Authorizing Issuance of Amended Order of Transfer of Authority* (March 28, 2008).

proposed transaction is contingent upon consummating the referenced merger transaction, but the merger is not contingent upon completion of the proposed financing arrangement.

The Petition

The *Petitioner* seeks approval to consummate a transaction whereby pursuant to an agreement and plan of merger between CCGI Holding, CCGI Merger Corporation (“CCGI Merger”) and CCGI,³ CCGI Holding would acquire all the equity interests of CCGI.⁴ CCGI is entering into the proposed financing arrangements to fund this acquisition and for other permitted purposes such as providing working capital, financing capital expenditures, refinancing existing debt and other general corporate purposes.

During the course of the transaction, CCGI Merger will be merged with and into CCGI, with CCGI emerging the surviving entity. Thus, CCGI will be the “Borrower” in the proposed transaction.

The proposed financing arrangements will consist of three facilities. The first facility is a senior secured first lien term facility, currently expected to be between \$148,500,000 and \$172,500,000 (the “Term Facility”). The proceeds of the Term Facility will be used by CCGI to (a) pay the consideration for the transfer of control, (b) refinance certain existing debts of CCGI and its subsidiaries, and (c) pay the costs of the transaction. The second facility is a senior secured first lien revolving credit facility in an amount expected to be between \$20,000,000 and \$25,000,000 (the “Revolving Facility”, together with the Term Facility, the “Senior First Lien Facilities”). The proceeds of loans under the Revolving Facility will be used by CCGI from time to time for general corporate purposes. The third facility is a senior secured second lien term loan facility (the “Senior Second Lien Facility”) in an aggregate principal amount expected to be between \$76,500,000 and \$87,500,000. The proceeds of the Senior Second Lien Facility will be used by CCGI to (a) pay the consideration for the transfer of control, (b) refinance existing debt, and (c) pay transaction costs.

³ Neither CCGI Holding nor CCGI Merger are regulated telecommunications service providers.

⁴ See Docket No. 07-00276

The final aggregate principal amount of each facility will be determined based upon market conditions. The Senior First Lien Facilities and Senior Second Lien Facilities will mature 364 days after the closing date; provided that upon receipt of the required regulatory approvals the maturity date will be extended to a date which is expected to be on or after the fifth anniversary of the closing date for the Senior First Lien Facilities, and the sixth anniversary of the closing date for the Senior Second Lien Facilities.

All obligations of Borrower under the Senior First Lien Facilities and Senior Second Lien Facilities will be guaranteed by CCGI Holding, CCGI, and certain CCGI subsidiaries including Covad. According to the *Petition*, the Senior First Lien Facilities and Senior Second Lien Facilities will also be secured by substantially all the assets of CCGI Holding, CCGI, and certain CCGI subsidiaries including Covad. Covad has Tennessee assets that will be pledged as collateral.⁵

The Petitioner asserts that Covad's participation in the financing arrangements will not result in a change in Covad's management or day-to-day operations; nor will it adversely affect Covad's current or proposed operations in Tennessee.

The Petitioner also states that approval of Covad's participation in the proposed financing arrangements will serve the public interest by strengthening Covad's ability to bring competitive telecommunications services to Tennessee customers.

Findings and Conclusions

The Applicant's 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.

⁵ See *Data Response* (March 14, 2008).

At a regularly scheduled Authority Conference held on April 7, 2008, the panel voted unanimously to approve the *Petition* based on the following findings:

1. This financing transaction is subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109 (2004).
2. The financing transactions are being made in accordance with laws enforceable by this Agency.
3. The proposed financing transaction is in the public interest because it will strengthen the Petitioner's competitive position by providing access to greater financial resources.⁶

IT IS THEREFORE ORDERED THAT:

1. DIECA Communications, Inc. d/b/a Covad Communications Company is authorized to participate in the financing transactions described in the *Petition* and discussed herein.
2. 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.



Tre Hargett, Director



Sara Kyle, Director



Ron Jones, Director

⁶ Director Jones made the following additional findings:

- (1) The proposed transaction is expected to affect the Tennessee assets of a Tennessee-Certificated entity.
- (2) The Petitioner has stated that it has filed similar petitions in other states and that federal approval of the indebtedness 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.