

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 7, 2008

IN RE:

**JOINT PETITION OF U.S. SOUTH COMMUNICATIONS, INC.
AND FIRST DATA CORPORATION FOR APPROVAL OF AN
INDIRECT TRANSFER OF CONTROL OF U.S. SOUTH
COMMUNICATIONS, INC. TO FIRST DATA CORPORATION**

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**DOCKET NO.
08-00094**

ORDER APPROVING TRANSFER OF CONTROL

This matter came before Chairman Tre Hargett, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 14, 2008 for consideration of the *Joint Petition* filed by U.S. South Communications, Inc. d/b/a INCOMM ("U.S. South") and First Data Corporation ("First Data") (together, "Petitioners") on June 3, 2008.

U.S. South, a wholly owned subsidiary of inComm Holdings, Inc. ("inComm"), is a Georgia corporation and provides resold intrastate long distance services to small and large businesses, as well as residential customers. U.S. South 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 long distance telecommunications resale services in Tennessee.¹

First Data provides electronic commerce and payment solutions for businesses worldwide and does not hold any federal or state authorizations to provide telecommunications services currently.

¹ See *Docket No 95-03396* (February 29, 1996).

The Joint Petition

The Petitioners are requesting approval to consummate a transaction, whereby pursuant to a merger agreement dated April 25, 2008, inComm and indirectly U.S. South will become a wholly-owned subsidiary of First Data Merchant Services Corporation, a Florida corporation that is an indirect wholly-owned subsidiary of First Data, which is indirectly owned and controlled by New Omaha Holdings L.P, a Delaware limited partnership.

According to the *Joint Petition*, the transaction will provide U.S. South increased access to additional corporate resources, thereby enabling it to expand its service offerings, to the ultimate benefit of its customers. Immediately following the transaction, U.S. South will continue to offer service with no change in its name or rates, terms and conditions of service making the transaction seamless and transparent to consumers in Tennessee.

Findings and Conclusions

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) provides:

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 July 14, 2008, the panel voted unanimously to approve the *Joint Petition* based on the following findings:

1. U.S. South will continue to provide services under the same rates, terms and conditions, making the transfer transparent to customers.


2. The transaction is in the public interest because it will afford U.S. South access to additional capital, thereby enabling it to expand its service offerings for the benefit of its customers.

3. The Petitioners have received the necessary FCC approval of the transfer of control and have filed this documentation with the Authority.

IT IS THEREFORE ORDERED THAT:

1. The transfer of authority of U.S. South Communications, Inc. to First Data Corporation as described in the *Joint Petition* and discussed herein is approved pursuant to Tenn. Code Ann. § 65-4-113 (2004).

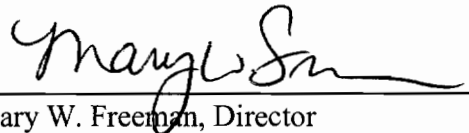
2. The Applicants are directed to file with the Authority any subsequent documentation from the Federal Communications Commission regarding the transfer.



Tre Hargett, Chairman



Sara Kyle, Director



Mary W. Freeman, Director