

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 10, 2008

IN RE:

**JOINT APPLICATION BY TELECOM MANAGEMENT,
INC. D/B/A PIONEER TELEPHONE AND BROADWING
COMMUNICATIONS, LLC FOR APPROVAL OF AN
ASSET PURCHASE AGREEMENT**

)
) **DOCKET NO.**
) **08-00137**
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ORDER APPROVING TRANSFER OF ASSETS

This matter came before Director Eddie Roberson, 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 September 22, 2008 for consideration of the *Joint Application* filed by Telecom Management, Inc. d/b/a Pioneer Telephone (“Pioneer”) and Broadwing Communications, LLC (“Broadwing”) (together “Applicants”) on July 24, 2008.

The Joint Application

Pioneer is a Maine Corporation with its corporate offices in Portland, Maine and is authorized to provide resold long distance telecommunications services in Tennessee.¹

Broadwing is a Delaware Company with its principal offices in Broomfield, Colorado, and a wholly-owned subsidiary of Level 3 Communications, LLC. Broadwing holds

¹ See *In re: Application of Telecom Management, Inc. d/b/a Pioneer Telephone for Authority to Provide Resell Telecommunications Service in Tennessee*, Docket No. 04-00316, *Order Granting Authority to Resell Interexchange Long Distance Telecommunications Services In Tennessee* (December 1, 2004).

authorization to provide long distance telecommunications services in Tennessee² and has approximately 724 customers.³

The Applicants request approval of a transaction whereby pursuant to asset purchase agreements between Broadwing and Pioneer dated July 9, 2008, Pioneer will acquire Broadwing's residential and Small Medium Enterprise ("SME") long distance customer accounts. Broadwing will continue to provide service to its SME customers until the Authority approves the acquisition, however, Pioneer shall manage the operations of the residential base pursuant to a management agreement with Broadwing, pending approval of the transaction. The *Joint Application* states that the acquisition will not result in any change in the rates, terms, and conditions under which Broadwing's customers presently receive service. In addition, the Applicants are not requesting a transfer of Broadwing's authorization or operating authority to Pioneer.

The *Joint Application* states that Pioneer is qualified to consummate the transactions as evidenced by Pioneer's financial information, which was attached, and that Broadwing's technical, managerial, and financial personnel will assist Pioneer with the transition and integration of the acquired assets after consummation of the transaction. The Applicants assert that the acquisition will serve the public interest because it will provide Pioneer with a heightened level of operating efficiency, which will enable it to provide telecommunications services to a greater number of consumers in Tennessee at competitive rates and enhance its overall capacity to compete in the marketplace.

² On July 3, 2003 in Docket No. 03-00240, the TRA approved CIII Communications Operations, LLC's request to acquire the Certificate of Convenience and Necessity of Broadway Communication Services, Inc. granted in Docket No. 95-03221 on October 13, 1995 and the Certificate of Convenience and Necessity of Broadwing Telecommunications, Inc. to provide resold and facilities-based intrastate interexchange telecommunications services in Tennessee granted in Docket No. 95-02659 on August 2, 1999. Later, on February 19, 2004, the TRA approved C III Communications Operations, LLC's petition to change its name to Broadwing Communications, LLC in Docket No. 03-00559.

³ *Data Response*, p. 1 (August 19, 2008).

In a Data Response received on August 19, 2008, the Applicants provided the Authority with a copy of the self-certification letter that was filed with the Federal Communications Commission and submitted a revised customer notification letter.

Findings and Conclusions

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 September 22, 2008 the panel voted unanimously to approve the *Joint Application* and made the following findings:

1. The proposed transaction will serve the public interest because it will provide Broadwing with a heightened level of operating efficiency which will serve to enhance its overall capacity to compete in the telecommunications market and provide telecommunications services to a greater number of consumers in Tennessee.
2. Existing Broadwing customers will continue to receive their current services at the same rates, terms and conditions with no disruption in service.
3. The customer notification letter as revised and filed on August 19, 2008 complies with Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d)(2).

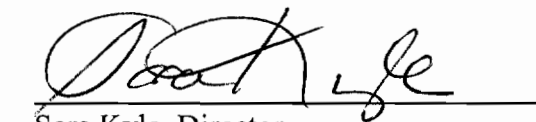
IT IS THEREFORE ORDERED THAT:

1. The transfer of assets of Broadwing Communications, LLC to Telecom Management, Inc. d/b/a Pioneer Telephone as described in the *Joint Petition* and discussed herein is approved pursuant to Tenn. Code Ann. § 65-4-112 (2004) and Tenn. Comp. R. & Regs. 1220-4-2-.56(2)(d) contingent upon approval by the Federal Communications Commission.
2. The customer notification letter as revised and filed on August 19, 2008 is hereby approved.

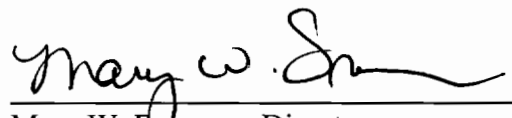
3. The Applicants are directed to file with the Authority any subsequent documentation from the Federal Communications Commission regarding the transfer.



Eddie Roberson, Director



Sara Kyle, Director



Mary W. Freeman, Director