

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

November 25, 2009

IN RE:)	
)	
JOINT APPLICATION OF BROADVIEW NETWORKS,)	
INC., ATX LICENSING, INC. AND A.R.C.)	DOCKET NO.
NETWORKS, INC. D/B/A INFOHIGHWAY FOR)	09-00130
AUTHORITY TO TRANSFER CUSTOMER BASE)	
AMONG AFFILIATED ENTITIES)	

ORDER APPROVING TRANSFER OF CUSTOMER BASE

This matter came before Chairman Sara Kyle, Director Kenneth C. Hill 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 October 26, 2009 for consideration of the *Joint Application* filed on September 8, 2009 by Broadview Networks, Inc. ("Broadview"), ATX Licensing, Inc. ("ATX"), and A.R.C. Networks, Inc. d/b/a InfoHighway ("A.R.C."), (together, "Applicants"), seeking approval of the proposed customer base transfer of certain long distance customers of ATX and A.R.C. to Broadview.

Broadview is a New York corporation and a wholly-owned subsidiary of Broadview Network Holdings, Inc. ("Holdings"). In Tennessee, Broadview is authorized to provide local exchange and interexchange services pursuant to Authority Order in Docket No. 09-00050 issued on August 4, 2009. ATX is a Delaware corporation and an indirect wholly-owned subsidiary of Holdings. In Tennessee, ATX has thirty-four business long distance customers¹ and is authorized to provide interexchange services pursuant to Authority Order in Docket No. 00-

¹ *Data Response*, p.3 (September 29, 2009).

00089 issued on March 14, 2000. A.R.C. Networks, Inc. d/b/a InfoHighway is a New York corporation and a wholly-owned subsidiary of Holdings. In Tennessee, A.R.C. has sixteen business customers² and is authorized to provide interexchange services pursuant to Authority Order in Docket No. 02-01168 issued on December 2, 2002.

THE JOINT APPLICATION

The Applicants propose to consolidate substantial portions of the existing long distance customer bases of ATX and A.R.C. under the Broadview name. The *Joint Application* states the proposed transaction will both solidify the service provider identity in Tennessee and allow the companies to realize certain synergies with respect to customer service. The *Joint Application* asserts the consolidation of the ATX and A.R.C. customer bases is in the public interest because it will enable Broadview to increase its efficiency of operations.

Following the consolidation, Broadview will continue to provide services to the transferred customers under the same rates, terms and conditions currently provided. The transaction will not cause any service disruptions, and the transfer will be entirely seamless and transparent to customers. Accordingly, ATX and A.R.C. intend to retain their respective authorizations to provide telecommunications services in Tennessee in order to provide service to their customers not migrated to Broadview.

FINDINGS AND CONCLUSIONS

The Authority finds that the transaction described in the *Joint Application* involves solely a transfer of a customer base. Since there are no other assets being transferred, only TRA Rule 1220-4-2-.56(2)(d) applies to the transaction.³ The rule provides:

² *Id.*

³ Consistent with Docket No. 04-00431 (May 17, 2006) and Docket No. 05-00269 (January 3, 2006), the Authority found that separate review and approval of the transaction under Tenn. Code Ann. § 65-4-112 is not required.

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. 00257, 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 U.S. First Class Postage by the telecommunications service provider being acquired to its customers describing the customer transfer and explaining that the customers' local or long distance service will be transferred to the acquiring telecommunications service provider by a certain date unless the customer selects another telecommunications service provider. This customer notification shall be mailed to the customers no less than thirty (30) days prior to the actual customer transfer. The notification letter required by the FCC may be used for the notification purposes of this part. The Authority may waive the thirty (30) day notice requirement of this part for good cause shown.
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.


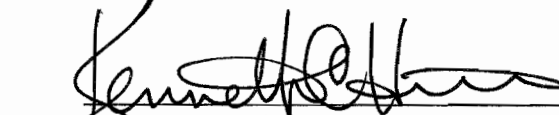

The panel found that the Applicants have satisfied the criteria of TRA Rule 1220-4-2-.56(2)(d) in all respects except seeking pre-approval of the customer notification letter. Concerning pre-approval, the Applicants stated that they issued customer notification letters on August 26, 2009.⁴ Because the letter was otherwise compliant with TRA Rule 1220-4-2-.56(2)(d), the panel found that good cause exists to waive the pre-approval requirement of the customer notification rule. Thereafter, the panel voted unanimously to approve the *Joint Application* and transfer of customers pursuant to TRA Rule 1220-4-2-.56(2)(d).

⁴ *Joint Application*, p. 2 (September 8, 2009).

IT IS THEREFORE ORDERED THAT:

1. Pursuant to TRA Rule 1220-4-2.56(2)(d)(2), good cause exists to waive the requirement of pre-approval for the customer notification letter, and such pre-approval is hereby waived.

2. The *Joint Application* of Broadview Networks, Inc., ATX Licensing, Inc. and A.R.C. Networks, Inc. d/b/a InfoHighway is hereby approved pursuant to TRA Rule 1220-4-2.56(2)(d).


Sara Kyle, Chairman
Kenneth C. Hill, Director
Mary W. Freeman, Director