

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

December 15, 2010

IN RE:

**JOINT PETITION OF PAETEC HOLDING CORP., TALK
AMERICA, INC., THE OTHER PHONE COMPANY AND
NETWORK TELEPHONE CORP. FOR APPROVAL (1) FOR
THE TRANSFER OF INDIRECT CONTROL OF TALK
AMERICA, INC., THE OTHER PHONE COMPANY AND
NETWORK TELEPHONE CORP., TO PAETEC HOLDING
CORP. AND (2) FOR THE CAVALIER ENTITIES TO
PARTICIPATE IN EXISTING AND NEW FINANCING
ARRANGEMENTS OF PAETEC HOLDING CORP.**

**DOCKET NO.
10-00188**

**ORDER APPROVING TRANSFER OF CONTROL
AND FINANCING TRANSACTIONS**

This matter came before Chairman Mary W. Freeman, Director Kenneth C. Hill and Director Sara Kyle 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 22, 2010 for consideration of the *Joint Petition* filed on September 15, 2010 by PAETEC Holding Corp. ("PAETEC"), Talk America, Inc. ("TA"), The Other Phone Company ("TOPC") and Network Telephone Corp. ("NTC") (TA, TOPC and NTC collectively, the "Cavalier Entities") (PAETEC and the Cavalier Entities collectively, the "Petitioners") for approval (1) of the transfer of indirect control of the Cavalier Entities to PAETEC (the "Cavalier Transfer") and (2) upon closing of the Cavalier Transfer, for the Cavalier Entities to participate in existing and new financing arrangements of PAETEC.

PAETEC is a publicly traded Delaware corporation. Through its regulated operating subsidiaries, including its subsidiaries that operate in Tennessee, PAETEC has a presence in

eighty-four of the nation's top 100 metropolitan statistical areas, delivering communications solutions to business customers in forty-six states and the District of Columbia. In Tennessee, PAETEC provides telecommunications services through its three operating subsidiaries: PaeTec Communications, Inc. ("PCI"),¹ US LEC of Tennessee LLC d/b/a PAETEC Business Services ("PAETEC-TN")² and McLeodUSA Telecommunications Services, LLC d/b/a PAETEC Business Services ("PAETEC Business").³

The Cavalier Entities are wholly-owned indirect subsidiaries of Cavalier Telephone Corporation ("Cavalier"), a Delaware corporation that provides telecommunications services and solutions to business, consumer and government customers. Through its various operating subsidiaries, including the Cavalier Entities, Cavalier uses its own network, including a fiber network, to serve customers throughout the Midwest, Southeast, Northeast and Mid-America states. The Cavalier Entities are each authorized by the Federal Communications Commission ("FCC") to provide domestic and/or international telecommunications services.

TA is a Pennsylvania corporation. In Tennessee, TA has approximately seventy customers and is authorized to provide local exchange and interexchange telecommunications services pursuant to Authority Order in Docket No. 02-00991.

TOPC is a Florida corporation. In Tennessee, TOPC has approximately nine customers and is authorized to provide facilities-based local exchange and resold interexchange telecommunications services pursuant to Authority Orders in Docket No. 99-00694 and Docket No. 98-00351.

¹ PCI is authorized to provide resold interexchange telecommunications services and operator services pursuant to Authority Order in Docket No. 98-00691.

² PAETEC-TN is authorized to provide local exchange, exchange access and interexchange telecommunications services pursuant to Authority Order in Docket No. 97-00387.

³ PAETEC Business is authorized to provide resold and facilities-based local exchange and intrastate interexchange telecommunications services pursuant to Authority Order in Docket No. 00-00906 and operator services pursuant to Authority Order in Docket No. 96-01632.

NTC is a Florida corporation. In Tennessee, NTC has approximately 1,475 customers and is authorized to provide facilities-based local exchange and resold interexchange telecommunications services pursuant to Authority Orders in Docket No. 00-00009 and Docket No. 98-00349.

DESCRIPTION OF THE CAVALIER TRANSFER

Pursuant to the Agreement and Plan of Merger, dated as of September 12, 2010, by and among PAETEC, Cairo Acquisition Corp. ("MergerCo") (an indirect, wholly-owned subsidiary of PAETEC created for purposes of the transaction), Cavalier and the Stockholder Representative, MergerCo will merge with and into Cavalier, with Cavalier continuing as the surviving entity (the "Merger"). As a result of the Merger, the Cavalier Entities will become wholly-owned, indirect subsidiaries of PAETEC and PAETEC Corp. Thus, PAETEC will become the new ultimate parent company of Cavalier and the Cavalier Entities.

DESCRIPTION OF THE FINANCING ARRANGEMENTS

The *Joint Petition* also requests approval for the Cavalier Entities to participate, upon closing of the Cavalier Transfer, in both existing financing arrangements and new financing arrangements. Specifically, Authority approval is sought for the Cavalier Entities to participate in the following financial arrangements:

(1) Approval is sought for the Cavalier Entities to provide a guarantee and pledge their assets as security for existing financing arrangements. The obligations of PAETEC and its subsidiaries under existing financing arrangements currently total \$950 million in aggregate principal amount, with an additional \$50 million available under an undrawn revolving credit facility. These arrangements were approved by Authority Orders issued in Docket Nos. 09-00161, 07-00229 and 06-00221. The existing arrangements require that future acquired or created subsidiaries of PAETEC also become guarantors and pledge their assets as security. As a

result, the Cavalier Entities will be required to provide guarantees and pledge their assets as security for the existing financing arrangements upon completion of the Cavalier Transfer.

(2) In connection with the existing financing arrangements, and in order to finance the Cavalier Transfer and other potential targeted acquisitions, PAETEC also plans to enter into new financing arrangements in an aggregate amount of up to \$600 million, for which certain of PAETEC's subsidiaries may be co-borrowers and/or be required to secure the debt obligations incurred in the financings by executing and delivering guarantees, pledge agreements and/or such other security agreements as may be required.⁴ Because future subsidiaries may also be co-borrowers and/or be required to secure the debt obligations incurred in the financing by executing and delivering guarantees, pledge agreements and/or such other security agreements, Petitioners request approval for the Cavalier Entities to participate, upon closing of the Cavalier Transfer, in the proposed new financing arrangements in an aggregate amount of up to \$600 million.

The *Joint Petition* states that the financing transactions will not result in a change of carrier for any customers or any assignment of existing Authority authorizations. Further, the rates, terms and conditions of services currently provided by the Cavalier Entities to their customers will not change as a result of the transaction. The proposed financing transactions will be transparent to customers.

FINDINGS AND CONCLUSIONS

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

⁴ PAETEC has filed a petition seeking Authority approval of those new financing arrangements in Docket No. 10-00176.

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, which in pertinent part, states 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.

Regarding the proposed financing transaction, Tenn. Code Ann. § 65-4-109 (2004) 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.

Based on the assertions in the *Joint Petition*, the panel found that the transfer and related financing transactions are in the public interest. Thereafter, based on the record, the panel voted unanimously to approve the transfer described in the *Joint Petition* pursuant to Tenn. Code Ann. § 65-4-113.

The panel also voted unanimously to approve the financing transaction pursuant to Tenn. Code Ann. § 65-4-109 based on the following findings.

1. This financing transaction is subject to Authority approval pursuant to Tenn. Code Ann. § 65-4-109.
2. The transaction is being made in accordance with the laws enforceable by this agency.

3. The purpose of this transaction is in the public interest because it will provide Petitioners with access to greater financial resources that will allow them to combine their operations and thereby become more effective competitors.

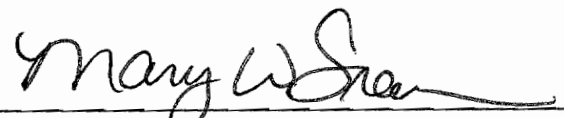
IT IS THEREFORE ORDERED THAT:

1. The transfer of control as described in the *Joint Petition* and discussed herein is approved.

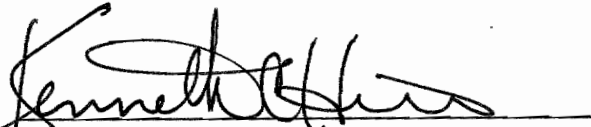
2. The financing arrangements as described in the *Joint Petition* and discussed herein are approved.

3. The authorization and approval given hereby shall not be used by any party, including but not limited to, any lending party for the purpose of inferring an analysis or assessment of the risks involved.

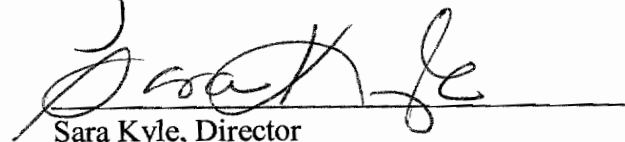
4. This decision is not intended to create any liability on the part of the Tennessee Regulatory Authority, the State of Tennessee or any political subdivision thereof.



Mary W. Freeman, Chairman



Kenneth C. Hill, Director



Sara Kyle, Director