

TENNESSEE REGULATORY AUTHORITY



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May 20, 2011

VIA FACSIMILE AND U.S. MAIL

James A. DeLanis, Esq.
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211 Commerce Street, Suite 800
Nashville, TN 37201

Re: Application of Securus Technologies, Inc. And Connect Acquisition Corp. For Expedited Approval Of The Indirect Transfer Of Control Of Securus Technologies, Inc. To Connect Acquisition Corp.
TRA Docket 11-00052

Dear Mr. DeLanis:

This letter is provided in response to the filing of the *Application of Securus Technologies, Inc. And Connect Acquisition Corp. For Expedited Approval Of The Indirect Transfer Of Control Of Securus Technologies, Inc. To Connect Acquisition Corp.* ("Application") with the Tennessee Regulatory Authority ("Authority") on April 14, 2011. Based upon the information provided in the *Application* and the current status of Securus Technologies, Inc. ("STI") as a market-regulated telecommunications service provider, the indirect transfer of control of STI to Connect Acquisition Corp. ("Connect"), whereby STI will become a wholly-owned indirect subsidiary of Connect, does not require approval by the Authority.

The *Application* states that STI is the former Evercom Systems, Inc. ("Evercom"). Evercom was certificated as an operator of Customer Owned Coin Operated Telephone Service ("COCOT") for the provision of inmate telephone services in Tennessee by Order of the Authority on August 10, 1999 in Docket No. 99-00502. Evercom has maintained its COCOT certification since 1999. Evercom was issued a Certificate of Convenience and Necessity to provide resell and operator services pursuant to an Order issued by the Authority on August 1, 2000 in Docket No. 00-00177. In Docket No. 04-00218, the Authority approved the *pro forma* indirect transfer of control of Evercom through the transfer of control of its indirect parent, Evercom Holdings, Inc. to TZ Holdings, Inc.¹ According to the *Application* and Authority approval in that docket, Evercom remained the separately certificated entity providing service

¹ TZ Holdings, Inc. was described as "majority-owned by H.I.G.-TNetix, Inc." in the *Application* filed in Docket No. 04-00218.

and there were no changes in rates, terms or conditions of the services provided by Evercom as a result of the transaction.² On May 6, 2011, Evercom filed a letter with the Authority giving notice of its change of name to Securus Technologies, Inc. The documentation accompanying the letter indicates that the name change was filed with the Tennessee Secretary of State on September 29, 2010. Evercom's notice has been assigned Docket No. 11-00069.

The *Application* describes the proposed transaction as controlled by the Agreement and Plan of Merger ("Merger Agreement") dated April 8, 2011. Pursuant to the Merger Agreement, Connect has created a wholly-owned subsidiary Connect Merger Corp. ("Connect Merger Sub") formed solely to effect the proposed transaction and through which the proposed transaction will be financed. Connect Merger Sub will ultimately merge with Securus Holdings, Inc. ("SHI"), which will survive the merger with Connect Merger Sub. Inasmuch as SHI wholly-owns Securus Technologies Holdings, Inc. ("STHI"), which in turn, wholly-owns STI, the result of the proposed merger transaction will position STI as a wholly-owned indirect subsidiary of Connect. The *Application* states:

The transaction will also be seamless and transparent to STI's customers, who will receive uninterrupted service from STI. There will be no immediate changes in the terms and conditions of the service provided by STI.

In the *Application*, STI requests authorization for the indirect transfer of STI to Connect. The *Application* also states that while the transaction will be financed through Connect Merger Sub, STI will be the borrower and will provide a security interest in its assets. The *Application* requests the TRA consider the transfer of control and asset transfer pursuant to Tenn. Code Ann. § 65-4-113. While Tenn. Code Ann. § 65-4-113 is the appropriate statute to review the transaction as described in the *Application*, a request to pledge assets in connection the financing agreement, as requested by STI, is governed by Tenn. Code Ann. § 65-4-109.

During the 2009 legislative session, Tenn. Code Ann. § 65-5-109 was amended through Public Chapter 278 to establish Market Regulation for Telecommunications Companies. Pursuant to that amendment, telecommunications service providers can elect to operate pursuant to market regulation by filing a notice with the Authority, with such election becoming effective upon filing. No formal or official action is required. Nevertheless, the Authority takes official notice of such filings to enable it to maintain a record of companies electing Market Regulation. By electing Market Regulation, telecommunication carriers become exempt from most aspects of the regulation of retail operations, including pricing. Those elements of regulation specifically retained by the TRA, as listed in Tenn. Code Ann. § 65-5-109 (m) include:

1. Exercising authority relating to obligations under the 1996 Federal Telecommunications Act or Federal Communications Commission (FCC) Orders and Rules;

² The *Order Approving Transfer of Authority* in Docket No. 04-00218 was entered on October 7, 2004.

2. Assessing & collecting inspection fees;
3. Exercising jurisdiction over cable and video franchises;
4. Exercising jurisdiction with respect to underground facilities damage prevention;
5. Exercising jurisdiction with respect to Life-Line and Link-up programs;
6. Exercising jurisdiction over the Tennessee Relay Service Center or the Telecommunications Devices Access Program (TDAP);
7. Exercising jurisdiction with respect to small and minority owned business participation plans;
8. Responding to specific customer complaints regarding residential telephone service;
9. Exercising jurisdiction with respect to Universal Service Funding;
10. Exercising jurisdiction with respect to intrastate switched access service;
11. Acting with respect to enforcement or modification of any wholesale Self Effectuating Enforcement Mechanism (SEEM) Plan in place as of January 1, 2009;
12. Exercising jurisdiction with respect to certification requirements;
13. Exercising jurisdiction with respect to extensions of facilities pursuant Tenn. Code Ann. § 65-5-114(2) or requiring extensions of facilities in accordance with the terms of the A5 and B5 tariffs of AT&T as such tariffs existed on January 1, 2009; and
14. Exercising jurisdiction pursuant to Tenn. Code Ann. § 65-4-125; however, the Authority shall exercise its jurisdiction under subsections (a) or (b) of that statute only in connection with a complaint.

Tenn. Code Ann. § 65-4-109 and Tenn. Code Ann. § 65-4-113 are not statutes listed under either Tenn. Code Ann. §§ 65-5-109(m) and (n) that continue to apply to market-regulated companies. On June 18, 2009, Evercom filed notice that it had elected relief under the Market Regulation Act of 2009 through a filing in Docket No. 09-00089. That docket was placed on the agenda for the Authority Conference held on August 4, 2009 and Evercom's notice was acknowledged by the Authority at that time.

Prior to passage of the Market Regulation Act of 2009, the Authority would review the *Application*, as noted above, under both Tenn. Code Ann. § 65-4-109 and Tenn. Code Ann. § 65-4-113. As a market-regulated telecommunications carrier, STI is exempt from Authority regulation except for specifically enumerated instances in Tenn. Code Ann. §§ 65-5-109(m) and (n) where Authority jurisdiction is preserved. As a result of the passage of the Market Regulation Act of 2009, which excludes Tenn. Code Ann. § 65-4-109 and § 65-4-113, and STI's election of market regulation pursuant to Tenn. Code Ann. § 65-5-109, the transaction as described in the *Application* falls outside the scope of the Authority's jurisdiction, as circumscribed by Tenn. Code Ann. § 65-5-109. Therefore, it is the position of the Authority that approval by the Authority of the transaction is not required. This conclusion is based solely on the facts as presented in the *Application* and is not to be construed as a statement of general

James A. DeLanis, Esq.
May 20, 2011
Page 4

policy regarding the Authority's jurisdiction to review transactions pursuant to Tenn. Code Ann. § 65-4-109 or § 65-4-113 in the instance where one or more entities involved in the transaction have elected market regulation. It is also not to be construed as a statement of general policy regarding the Authority's jurisdiction to review financing transactions pursuant to Tenn. Code Ann. § 65-4-109.

Thank you for your detailed description and explanation of the transaction in the *Application*. Should you have any additional questions or should there be a change in any of the information provided in the *Application*, please contact me at the telephone number indicated below.

Very truly yours,

A handwritten signature in black ink that reads "J. Richard Collier". The signature is written in a cursive style with a large, stylized "J" and "C".

J. Richard Collier
General Counsel
(615) 741-3191 ext. 170

c: Chairman Mary W. Freeman
Jerry Kettles, Chief of Economic Analysis Division
David Foster, Chief of Utilities Division
Docket No. 11-00052