

070629 -TP

September 26, 2007

**VIA OVERNIGHT DELIVERY**

Ann Cole, Clerk of the Commission  
Florida Public Service Commission  
Division of the Commission Clerk and Administrative Services  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

RECEIVED-FPSC  
07 SEP 27 PM 4:35  
COMMISSION  
CLERK

**Re: PAETEC Communications, Inc., and US LEC of Florida Inc.  
Joint Notice of Intra-Corporate Merger and Petition for Waiver to Transfer  
Customers**

Dear Ms. Cole:

On behalf of PAETEC Communications, Inc., and US LEC of Florida Inc., transmitted herewith are an original and seven (7) copies of the above-referenced notice of an intra-corporate merger and petition for US LEC to transfer customers to PAETEC.

Please date-stamp and return the extra copy of this filing, which is included for this purpose. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 344-8065.

Respectfully submitted,



Tony S. Lee  
Grace R. Chiu  
Christine McLaughlin

Counsel to PAETEC Communications, Inc., and  
US LEC of Florida Inc.

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COMMUNICATIONS

DOCUMENT NUMBER-DATE

08909 SEP 27 07

FPSC-COMMISSION CLERK

**BEFORE THE PUBLIC SERVICE COMMISSION  
FOR THE STATE OF FLORIDA**

In the Matter of )  
 )  
**PAETEC COMMUNICATIONS., INC.** )  
 )  
and )  
 )  
**US LEC OF FLORIDA INC.** )  
 )  
Joint Notice Regarding an Intra-Corporate )  
Merger and Joint Petition for Waiver to )  
Transfer Customers. )  
\_\_\_\_\_ )

Docket No. 070629

**JOINT NOTICE AND PETITION**

PAETEC Communications, Inc. ("PAETEC") and US LEC of Florida Inc. d/b/a PAETEC Business Systems ("US LEC-FL") (collectively, "Petitioners"), by their undersigned counsel, provides notice to the Commission of an intra-corporate merger whereby PAETEC and US LEC, which are both ultimately owned by PAETEC Holding Corp., will undergo a transaction whereby US LEC-FL will be merged into PAETEC and cease its corporate existence. Specifically, the components of the transaction are as follows: (1) Petitioners will undertake an intra-corporate merger of PAETEC and US LEC-FL, with PAETEC the surviving entity; (2) US LEC-FL will discontinue service to its current customers as described herein; and (3) effective upon completion of the intra-corporate merger, which is anticipated to occur on or about January 1, 2008, US LEC-FL will cancel its authorization to provide interexchange and local exchange telecommunications services in the Florida. Petitioners provide notice of the intra-corporate merger to the Commission for informational purposes, and it is their understanding that prior approval for the merger is not required.

DOCUMENT NUMBER-DATE  
**08909 SEP 27 5**

However, because the intra-corporate merger will involve the transfer of US LEC-FL's customers to PAETEC, pursuant to Section 364.337(4) of the Florida statutes, Fla. Stat. § 364.337(4), and Rule 25-24.455 of the Florida Administrative Code, 25-24-455, F.A.C., Petitioners request a waiver of Rule 25-4118 of the Florida Administrative Code, 25-4118, F.A.C., so that US LEC-FL will not be required to obtain either a letter of agency or third party verification for each of US LEC-FL's more than 7,000 customers in order to migrate customers from PAETEC to US LEC-FL. As more fully described below, the proposed merger and discontinuance will result in a change in the service provider for US LEC-FL's current customers, and those customers will become the customers of PAETEC. Petitioners respectfully request that approval of this Petition be granted no later than December 1, 2007, so that the parties may consummate the proposed transaction on or about January 1, 2008, to merge US LEC into PAETEC, and streamline the companies' operations.<sup>1</sup>

In support hereof, Petitioners state as follows:

**I. THE PARTIES**

**A. PAETEC Communications, Inc.**

PAETEC is a Delaware corporation with principal offices located at One PAETEC Plaza, 600 Willowbrook Office Park, Fairport, New York 14450. PAETEC is a wholly-owned subsidiary of PAETEC Corp., which in turn is a wholly-owned subsidiary of PAETEC Holding Corp., a publicly traded Delaware corporation (NASDAQ: PAET). PAETEC Holding Corp. is the holding company of several subsidiaries, including the parties to this proceeding. Formed in 1998, PAETEC and its affiliates provide innovative communications solutions to medium and

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<sup>1</sup> PAETEC Holding Corp. has entered into a merger agreement with McLeodUSA Incorporated, whereby PAETEC Holding Corp. will acquire indirect control of McLeodUSA Telecommunications Services, Inc., a telecommunications company certificated to provide service in Florida. PAETEC Holding Corp. and McLeodUSA have filed or will file shortly a notice with the Commission regarding that transaction. The waiver request that is part of the Petition is a wholly separate transaction from the PAETEC/McLeodUSA merger.

large businesses and institutions through a full line of telecommunications and Internet services, enterprise communications management software, security solutions, and managed services. The company offers personalized solutions that include a comprehensive suite of Voice over Internet Protocol (VoIP) services delivered over its Private-IP MPLS network.

In Florida, PAETEC is authorized to provide interexchange and local exchange service pursuant to IXC Certificate No. 5757 and ALEC Certificate No. 5756. PAETEC is also authorized to provide interexchange and/or competitive local exchange service in numerous other states pursuant to certification, registration, or tariff requirements, or on a deregulated basis. In addition, PAETEC is authorized by the Federal Communications Commission to provide international services as a non-dominant carrier.

Further information regarding PAETEC's technical, managerial, and financial qualifications to provide service was submitted with its application for authority to provide service in the state, and therefore, that information is a matter of public record. PAETEC respectfully requests that the Commission take official notice of that information, and incorporate it by reference herein.

**B. US LEC of Florida Inc.**

US LEC-FL, a North Carolina corporation, is a wholly owned subsidiary of US LEC Corp., which in turn is a wholly owned subsidiary of PAETEC Holding Corp. Both US LEC companies maintain their principal offices in Charlotte, North Carolina. US LEC-FL is a leading provider of IP, data and voice solutions to business customers and enterprise organizations throughout the Eastern United States. Members of the US LEC family of companies are currently authorized to provide resold and/or facilities-based telecommunications services in 43 states and the District of Columbia pursuant to certification, registration or tariff requirements, or on a deregulated basis.

In Florida, US LEC-FL is authorized to provide interexchange and local exchange service pursuant to IXC Certificate No. 5310 and ALEC Certificate No. 5311. Further information regarding US LEC-FL's legal, technical, managerial and financial qualifications to provide service was submitted with its applications for certification. Such information therefore is already a matter of public record, and Petitioners request that it be incorporated by reference herein.

US LEC-FL and its affiliates provide local exchange services in Alabama, Delaware, the District of Columbia, Florida, Georgia, Indiana, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, and Virginia. US LEC operating subsidiaries are also authorized by the Federal Communications Commission to provide international and domestic interstate services as nondominant carriers. Earlier this year, PAETEC Holding Corp. acquired US LEC-FL in PSC Docket No. 06-282. US LEC-FL is now an indirect wholly-owned subsidiary of PAETEC Holding Corp.

## **II. DESIGNATED CONTACTS**

All matters related to this Petition, including all inquires, correspondence, communications, pleadings, notices, orders, and decisions, should be addressed to the following:

Tony S. Lee  
Grace R. Chiu  
Venable LLP  
575 7th Street, N.W.  
Washington, DC 20004  
Tel: (202) 344-4000  
Fax: (202) 344-8300  
E-mail: [tslee@venable.com](mailto:tslee@venable.com)  
[grchiu@venable.com](mailto:grchiu@venable.com)

## **III. DESCRIPTION OF THE INTRA-CORPORATE MERGER**

By way of background, in 2006, PAETEC Holding Corp. and US LEC Corp. previously agreed to a merger in order to expand their telecommunications operations in a cost-efficient

manner, thereby enhancing the combined companies' competitive position and ability to provide integrated telecommunications services to customers in Florida as well as other states. After receiving approval from the Commission and other state regulatory agencies, PAETEC Holding Corp. and US LEC Corp. consummated the transaction, and PAETEC Holding Corp. became a publicly traded company. Both PAETEC and US LEC-FL are now indirect wholly-owned subsidiaries of PAETEC Holding Corp.

While the companies have started the process of streamlining and integrating their operations, the companies continue to maintain separate billing systems, customer service operations, and other internal processes that are largely duplicative. In order to eliminate redundancies and inefficiencies, and to further streamline company operations, the parties have determined that they should consolidate their administrative and business operations into a unified system. To that end, Petitioners propose to merge US LEC-FL into PAETEC, with PAETEC surviving and serving all of US LEC-FL's current customers. Post-transaction, it is anticipated that PAETEC Corp. and US LEC Corp. will hold a 70% and 30% interest in PAETEC, respectively.<sup>2</sup> A diagram depicting the proposed transaction is attached hereto as Exhibit A.

Following the merger, ultimate ownership and control of US LEC-FL's business will continue to reside in PAETEC Holding Corp. PAETEC will provide telecommunications services to US LEC-FL's current customers pursuant to authority granted to PAETEC by the Commission. The rates, terms, and conditions of service will be provided pursuant to existing US LEC contracts assumed by PAETEC, or pursuant to PAETEC's tariffs. There will be no

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<sup>2</sup> The final percentages to be held by PAETEC Corp. and US LEC Corp. may vary from the estimates provided herein; however, any such change will not be material. In particular, PAETEC Corp. will continue to own a controlling share of PAETEC at all times before and after the merger. Both PAETEC Corp. and US LEC Corp. will remain wholly owned subsidiaries of PAETEC Holding Corp.

immediate changes to the rates and services provided to US LEC-FL's existing customers, and upon expiration of any service contracts with those customers, they will have the option to continue service with PAETEC pursuant to its then-current rates, terms, and conditions or other negotiated agreements, or to select service from another telecommunications service provider. The proposed merger will be completely seamless to US LEC-FL's existing customers in terms of the services they currently receive. Petitioners will provide US LEC-FL customers with at least 30 days' advance subscriber notice of the merger prior to completion of the transaction. A copy of the form of customer notice is attached hereto as Exhibit B.

Because the parties are managed by the same team of well-qualified officers and directors, key personnel in charge of the companies' operations will not change as a result of the proposed merger and discontinuance. PAETEC's management, which oversees US LEC's current operations, will ensure that US LEC's customers continue to receive high quality and innovative services before and after the transition. Affected customers will receive the same services from PAETEC that they currently receive from US LEC, and PAETEC will continue to provide services pursuant to its own certificate of authority, as referenced above.

To accomplish the proposed corporate restructuring, prior state regulatory approval is required in several states in addition to Florida. However, US LEC-FL must retain its authorization to provide service in Florida until all approvals are obtained and the merger is completed. Premature cancellation of US LEC-FL authorization to provide telecommunications service in Florida could lead to unintended disruptions in service until the merger is completed. Accordingly, Petitioners request that cancellation of US LEC-FL's certificate become effective upon completion of the intra-corporate merger, which is anticipated to occur on or about January 1, 2008, to ensure that US LEC-FL can provide continuous

uninterrupted service to the public following Commission approval of this Petition, and prior to completion of the proposed merger.

#### **IV. PUBLIC INTEREST CONSIDERATIONS**

The primary objective of the merger is to achieve greater corporate efficiencies by eliminating duplicative billing systems, customer service operations, and other internal processes maintained by the parties. The proposed transaction will serve the public interest by combining and fully integrating the financial resources and complementary operating, technical, and managerial strengths of PAETEC and US LEC-FL to better serve the companies' constituent subscribers. Petitioners anticipate that the proposed transaction will result in a more efficient company better equipped to accelerate its growth as a competitive telecommunications provider. The transaction will enable PAETEC to strengthen its competitive position in Florida by enabling the company to achieve economies of scale and efficiencies of operation, with opportunities to enhance service quality and expand service offerings, which will inure to the benefit of consumers through improved service. Thus, approval of the instant Petition for waiver of Rule 25-4.118 will ensure continued provision of high quality, affordable telecommunications services to existing customers, and promote competition in the Florida telecommunications services market by offering consumers a cost effective and competitive alternative. Therefore, grant of this Petition is in the public interest.

#### **V. REQUEST FOR EXPEDITED REVIEW**

Petitioners submit that expeditious grant of this Petition is appropriate given that: (1) the transaction is an intra-corporate merger involving companies under common ownership and control; (2) the surviving entity, PAETEC, holds authority from this Commission that is equal to or greater than that granted to US LEC-FL; and (3) approval of the waiver is in the public

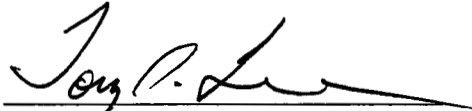


interest. Petitioners therefore respectfully request that this Petition be considered and ruled on by the Commission no later than December 1, 2007.

## VI. CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioners submit that the information provided herein demonstrates that the public interest, convenience, and necessity would be served by grant of the instant Petition. Accordingly, Petitioners respectfully request that the Commission approve the Joint Petition no later than December 1, 2007, to authorize US LEC-FL to discontinue service and transfer to its current customers as described herein to PAETEC. Petitioners further notify the Commission that effective upon completion of the intra-corporate merger, which is anticipated to occur on or about January 1, 2008, they intend to cancel US LEC-FL's authorization to provide local exchange and intrastate telecommunications services in the state of Florida. Petitioners further request that the Commission grant all other relief as necessary and appropriate to effectuate the transaction described herein.

Respectfully submitted,



Tony S. Lee  
Grace R. Chiu  
Christine McLaughlin  
VENABLE LLP  
575 7th Street, N.W.  
Washington, DC 20004  
Fairport, NY 14450  
Tel: (202) 344-4000  
Fax: (202) 344-8300  
E-mail: [tslee@venable.com](mailto:tslee@venable.com)  
[grchiu@venable.com](mailto:grchiu@venable.com)  
[cmclaughlin@venable.com](mailto:cmclaughlin@venable.com)

Date: September 26, 2007

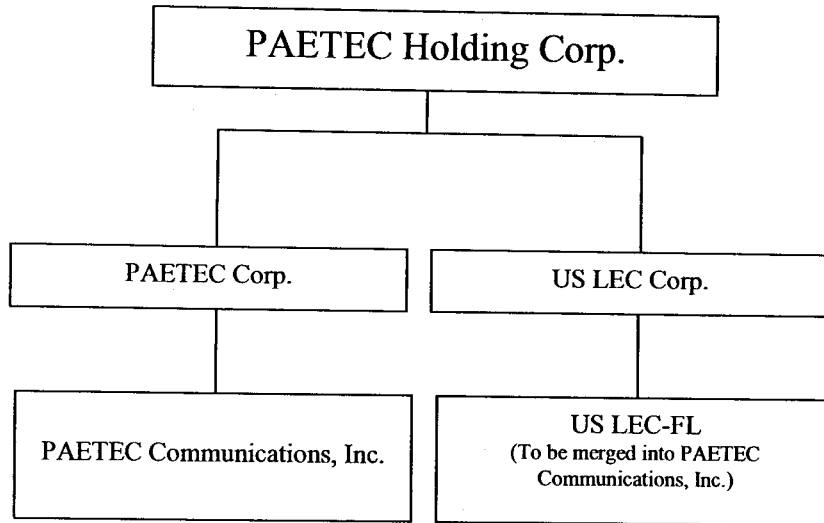
**EXHIBITS**

Exhibit A	Pre/Post-Merger Corporate Structure
Exhibit B	Form of Customer Notification
Verification	

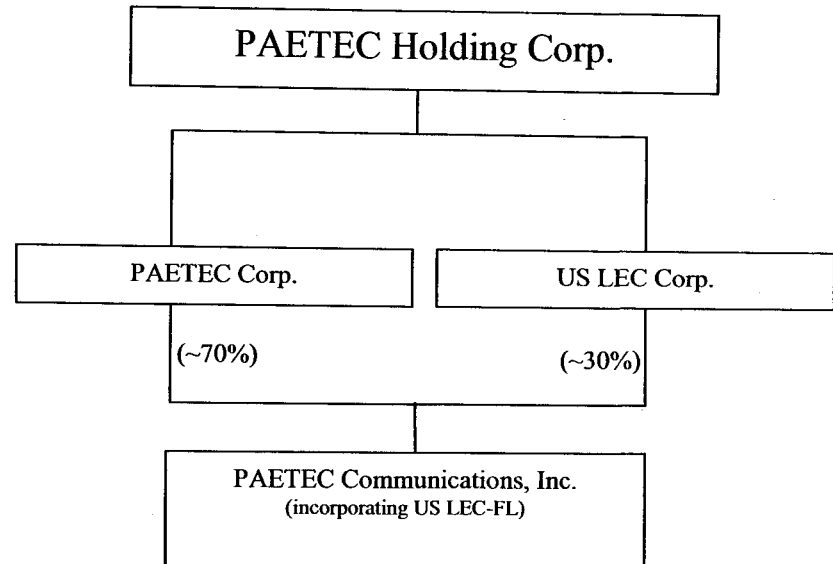
**EXHIBIT A**

**Pre/Post-Merger Corporate Structure\***

Pre-Merger Corporate Structure



Post-Merger Corporate Structure



\*Unless otherwise stated, links indicate 100% ownership interest

**EXHIBIT B**

Form of Customer Notification



## PAETEC

### US LEC - PAETEC MERGER

Dear Valued Customer:

As you have likely heard, the US LEC company currently serving you<sup>1</sup> became part of the PAETEC family in March 2007, and now does business under the name "PAETEC Business Services." In order to simplify PAETEC's corporate structure and maximize the benefits that we offer you, we are now planning to merge your US LEC company and its affiliates into a single unified company, PAETEC Communications, Inc. ("PAETEC"). We expect this change to occur on or about January 1, 2008, pending all necessary regulatory approvals. Because this will technically result in a transfer of your service to another provider, we are required to provide certain information to you.

US LEC and PAETEC will work to ensure that the transfer of your services to PAETEC is seamless and transparent to you. Your current services will continue to be provided under the same rates, terms, and conditions that you currently enjoy with US LEC. Your service agreement with US LEC will remain in force, and will be honored by PAETEC. Your account manager will remain the same. You will be notified of any future changes in rates, terms, and conditions of service as required by law; however, no such changes are anticipated. PAETEC will be responsible for handling any questions or issues prior to and during the transfer. PAETEC will also be responsible for any carrier change charges that may be associated with the transfer. If you have placed a "freeze" on the current services, the freeze will be lifted (if needed) and your services will be transferred to PAETEC. As the service subscriber you must contact your local service provider if such provider is not PAETEC, to re-establish freeze protection for your services after the date of final transfer.

As always, you have the right to choose a different carrier for your services. If you do take steps to transfer your service to a different carrier you will need to make sure that the new service is ordered and provisioned no later than December 31, 2007. Please note that choosing to terminate services may result in early termination charges being assessed per your US LEC contract. If you are a customer of US LEC on the date of the transfer and you have not informed US LEC that you have made arrangements to switch to a carrier other than PAETEC, your services will automatically be transferred to PAETEC.

US LEC and PAETEC are committed to providing you with outstanding customer service, as well as personalized business solutions aimed to meet all of your communications needs. We look forward to continuing the mutually beneficial relationship that you have built with US LEC. If you have any questions, please do not hesitate to contact your account team to learn more about our company and service offerings. Please call us toll free at 1-877-340-2600 or visit the PAETEC website at [www.paetec.com](http://www.paetec.com).

Cordially,

**John Baron**

**Chief Marketing and Training Officer and Executive Vice President**

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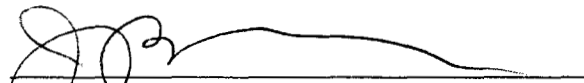
<sup>1</sup> Our records indicate that you are served by one or more of the following companies: US LEC COMMUNICATIONS INC.; US LEC OF ALABAMA INC.; US LEC OF FLORIDA INC.; US LEC OF GEORGIA INC.; US LEC OF MARYLAND INC.; US LEC OF NORTH CAROLINA INC.; US LEC OF PENNSYLVANIA INC.; US LEC OF SOUTH CAROLINA INC.; US LEC OF TENNESSEE INC.; and US LEC OF VIRGINIA L.L.C.

**VERIFICATION**

VERIFICATION

STATE OF NEW YORK           §  
  §  
COUNTY OF MONROE         §

I, John B. Messenger, hereby verify under penalty of perjury that I am Vice President and Assistant Secretary of PAETEC Communications, Inc.; that I am authorized to make this verification on behalf of the company; that I have read the foregoing document and know the contents thereof; and that the same are true of my own knowledge, except to those matters therein stated upon information and belief, and as to those matters I believe them to be true.

  
\_\_\_\_\_  
John B. Messenger  
Vice President and Assistant Secretary  
PAETEC Communications, Inc.

Subscribed and sworn to before me on this 24 th day of September, 2007. .

Karen F. Ferrini

My commission expires: 11/30/10

KAREN F. FERRINI  
Notary Public, State of New York  
No. 4765553  
Qualified in Monroe County 2010  
Commission Expires Nov. 30, 2010