

**Before the  
State of Utah  
Public Service Commission**

**In the Matter of the Joint Application of** )  
 )  
**TechInvest Holding Company, Inc.,** )  
 )  
**Cypress Communications Operating Company,** )  
**LLC** )  
 )  
**and** )  
 )  
**The Broadvox Holding Company, LLC** )  
 )  
**for Approval of a Transfer of Control of an** )  
**Authorized Telecommunications Provider** )

**JOINT APPLICATION**

TechInvest Holding Company, Inc. (“THC”), Cypress Communications Operating Company, LLC (“Cypress”) and The Broadvox Holding Company, LLC (“Broadvox”) (collectively, “Applicants”), by their counsel and pursuant to Utah Code Sections 54-4-28 and 54-4-29, hereby respectfully request authority from the Utah Public Service Commission (“Commission”), to the extent it may be required, to consummate a merger transaction resulting in the transfer of control of Cypress from its existing ultimate parent, THC, to Broadvox. Cypress provides managed voice and data communications services via TDM and VoIP to business customers in the top 31 markets in the U.S. Cypress is authorized as a competitive provider of telecommunications services in 32 states, including in Utah. Cypress is a wholly-owned indirect subsidiary of THC, which is controlled by affiliates of Arcapita Bank B.S.C. (c) (“Arcapita”). Broadvox, through its subsidiaries, currently provides unregulated IP-based communications services to

wholesale and retail business customers in the U.S., but no Broadvox entity currently provides domestic or international telecommunications services.

As described more fully below, Broadvox and THC have entered into an agreement pursuant to which a subsidiary of Broadvox will merge with and into THC. THC will survive the merger, and thus, Cypress will become a wholly-owned indirect subsidiary of Broadvox (the “Transaction”). This change in ultimate control of Cypress will occur at the parent holding company level and will not directly involve the membership interests of Cypress. Further, the Transaction does not involve a transfer of operating authority, assets or customers, and the process is expected to be seamless to end user customers. Immediately following consummation of the Transaction, Cypress will continue to offer the same services, rates, terms and conditions pursuant to its existing authorizations and the only change resulting from the Transaction will be that Cypress will be ultimately owned by Broadvox. Arcapita will have no equity interest in Cypress or Broadvox post-close.

The closing of the Transaction is contingent upon receipt of the necessary regulatory approvals, among other things. Therefore, the Applicants request that the Commission grant all relief sought herein as expeditiously as possible so that the Applicants can close the Transaction as soon as practicable in order for the Applicants to meet critical business objectives. In support of this Application, the Applicants provide the following information:

## **I. APPLICANTS**

### **A. Broadvox**

Broadvox is a Delaware limited liability company with its principal place of business at 1228 Euclid Avenue, Suite 390, Cleveland, Ohio 44115. Broadvox is a holding company that operates through its subsidiaries, including BroadvoxGO! LLC (“BroadvoxGO”); Broadvox, LLC (“Broadvox Wholesale”); Brivia Acquisition, LLC (“Brivia”); and Origination Technologies, LLC (“Origination”). Another subsidiary, Broadvox-CLEC, LLC (“Broadvox-CLEC”), holds licenses and certificates authorizing it to provide telecommunications services, but this entity does not currently provide any service to any customers. Broadvox-CLEC, BroadvoxGO, Broadvox Wholesale, and Origination are Delaware limited liability companies; Brivia is an Ohio limited liability company.

*Customers and services.* Broadvox provides unregulated IP-based information services to approximately 300 wholesale carriers and over 3,500 small- and medium-sized businesses and enterprise retail customers. Through Broadvox Wholesale, Brivia, and Origination, Broadvox offers wholesale SIP originating and terminating services to CLECs, ISPs, Internet telephone service providers, and application service providers. Broadvox provides retail VoIP and SIP trunking products to small- to medium-sized businesses and large enterprises through BroadvoxGO. Most of Broadvox’s revenues are derived from its wholesale product line.

*Network and geographic service areas.* Broadvox Wholesale, Brivia, and Origination provide wholesale termination services world-wide, and origination services throughout the U.S. Retail VoIP and SIP trunking originating services are available through BroadvoxGO in the continental U.S. and Hawaii. Customers who purchase retail

SIP trunking terminating service can make local calls wherever originating service is available; long distance calls throughout the U.S., including Puerto Rico and the U.S. Virgin Islands; and international calls throughout the world. BroadvoxGO's top 10 markets for retail VoIP and SIP trunking products are Texas, California, Washington, Florida, Ohio, Illinois, New York, Pennsylvania, Virginia, and Arizona.

The Broadvox network consists of a private Synchronous Optical Network ("SONET") ring architecture supported by OC-48 connections operating at 2.5 Gbps on Cisco GSR 12000 Internet routers. Additional routing and access to network services is provided via paired Sonus GSX 9000 Session Border Controllers ("SBCs") in Dallas, TX; Los Angeles, CA; and New York City, NY, with standalone units in Chicago, IL, and Atlanta, GA. The SIP trunking service is supported by paired Dell PowerEdge R7 10 servers in Dallas, TX; Los Angeles, CA; and New York City, NY. Broadvox has additional major points of presence in Miami, FL; Denver, CO; Seattle, WA; and Cleveland, OH.

While Broadvox owns and operates its own switches, routers, servers, and other network equipment, it does not own fiber, IRUs, or other transmission facilities. Rather, Broadvox leases transmission lines from other carriers. Traditionally, BroadvoxGO has been a Bring Your Own Broadband ("BYOB") service provider; customers are not required to purchase broadband from BroadvoxGO to acquire any of its retail services. However, due to customer demand, BroadvoxGO recently added broadband connectivity to its retail product offering. BroadvoxGO uses MegaPath (previously Covad) and Global Capacity to delivery DSL, ADSL, SDSL, T1, bonded T1, DS3 and Ethernet connectivity wherever these two carriers can provide circuits.

*Regulatory authority.* No Broadvox entity (including any Broadvox affiliate) currently provides either domestic or international telecommunications services. Broadvox-CLEC holds international Section 214 authority from the Federal Communications Commission and holds or has applied for certificates to provide local and intrastate toll services in 43 states, including in Utah pursuant to Docket No. 09-2515-01. The senior management of Broadvox-CLEC has great depth in the telecommunications industry and offers extensive telecommunications business, technical and managerial expertise to Broadvox-CLEC

*Ownership.* Broadvox is owned and managed by its sole member, Broadvox, Inc. (“Broadvox Parent”), an Ohio company and holding company. Three (3) individuals, all U.S. citizens, hold a 10 percent or greater interest in Broadvox Parent. Andre Temnorod, the Chairman and CEO of Broadvox Parent, holds a 43.66 percent ownership interest in Broadvox Parent. Eugene Blumin, the Chief Operating Officer of Broadvox Parent, holds a 21.83 percent ownership interest in Broadvox Parent. Alex Bederman also holds a 21.83 percent ownership interest in Broadvox Parent. The principal business of Mr. Bederman is investment. No other entity or individual holds a 10 percent or greater ownership interest in Broadvox Parent.

Diagrams showing the current corporate structure of Broadvox are provided in **Exhibit A**.

**B. Cypress and THC**

Cypress is a limited liability company organized under the laws of Delaware with its principal place of business located at 4 Piedmont Center, Suite 600, 3565 Piedmont Road, Atlanta, Georgia 30305.

*Customers and services.* Cypress provides voice and data telecommunications services as well as unregulated information services to approximately 5,000 small- and medium-sized business customers. Cypress offers its customers integrated service bundles that may include local, long distance, and international telecommunications services; toll-free telecommunications services; high-speed Internet access; voicemail services; e-mail services; unified messaging; firewall services; web hosting; virtual private networks; and audio and web conferencing.

*Network and geographic service areas.* Virtually all of Cypress's customers are located in class "A" office buildings, and all are based in the U.S. Cypress provides service to approximately 80 percent of its customers using a shared-tenant-services platform that relies on in-building PBXs and TDM technology. Cypress's TDM-based services are available in approximately 500 office buildings located in the following major metropolitan areas: Dallas, TX; Houston, TX; Chicago, IL; Atlanta, GA; Philadelphia, PA; Los Angeles, CA; San Francisco, CA; Miami, FL; Tampa, FL; Boston, MA; Arlington/McLean, VA; Indianapolis, IN; Seattle, WA; Minneapolis, MN; Phoenix, AZ; Hartford, CT; Rutherford, NJ; Denver, CO; Washington, DC; New York, NY; Bethesda, MD; Birmingham, AL; Nashville, TN; Charlotte, NC; Wilmington, DE; Troy, MI; Las Vegas, NV; St. Louis, MO; Jackson, MS; Portland, OR; and Greenville, SC.

Cypress provides unregulated information services to approximately 20 percent of its customers using a VoIP-based platform that relies on Nortel switches and application servers. Cypress's VoIP services are available in the continental U.S. wherever Cypress can obtain a wholesale T-1 circuit or other access circuit with sufficient broadband capacity for its customer's needs. Cypress currently provides VoIP services in Arkansas,

Missouri, Nebraska, New Hampshire, North Dakota, Ohio, Rhode Island, and Vermont, as well as in the states in which Cypress provides its TDM-based services. Cypress's top 10 metropolitan markets for VoIP services are Los Angeles, CA; Atlanta, GA; Dallas, TX; Houston, TX; New York City, NY/Rutherford, NJ; Philadelphia, PA; Arlington, VA/Washington, DC; Chicago, IL; Miami, FL; and Minneapolis, MN.

While Cypress owns and operates its own switches, routers, servers, PBXs, and other network equipment, it does not own fiber, IRUs, or other transmission facilities. Rather, Cypress leases transmission lines (including access circuits) from other carriers, typically Verizon, AT&T, Qwest, XO, Level 3, or Time Warner.

*Regulatory authority.* Cypress holds domestic and international authority from the Federal Communications Commission as well as certificates to provide local and intrastate toll services in 32 states, including in Utah pursuant to Docket No. 02-2389-01, July 22, 2002.

*Ownership.* At present, Cypress is a wholly-owned subsidiary of Cypress Communications, Inc. ("CCI"), a Delaware corporation and a holding company. CCI is, in turn, a wholly-owned subsidiary of Cypress Communications Holding Company ("Cypress Holding"), a Delaware corporation and a holding company. Cypress Holding is a wholly-owned subsidiary of THC, which is also a Delaware corporation.

THC is controlled by Arcapita, a joint stock company that is organized under the laws of the Kingdom of Bahrain and that holds, indirectly, a majority of Cypress's stock. Arcapita is a private equity firm whose U.S. operations are based in Atlanta, GA. Arcapita's U.S. investment portfolio includes various U.S. companies in the manufacturing, services and technology sectors, including PODS and Caribou Coffee.

Arcapita’s role vis-à-vis Cypress has been to provide financial support as well as management and strategic advice, while the day-to-day operations of Cypress are handled by Cypress personnel. Arcapita is not a strategic investor, but rather a financial investor that invested in Cypress to generate a return on its capital.

Diagrams showing the current corporate structure of Cypress, including all entities and individuals that hold a 10 percent or greater equity or voting interest in Cypress at present, are provided in **Exhibit B**.

**II. DESIGNATED CONTACTS**

The designated contacts for questions concerning this Application are:

<b>FOR CYPRESS AND THC</b>	<b>FOR BROADVOX</b>
Joan M. Griffin Melissa S. Conway Kelley Drye & Warren LLP 3050 K Street, NW, Suite 400 Washington, DC 20007 (202) 342-8552 (telephone) (202) 342-8451 (facsimile) <a href="mailto:mconway@kelleydrye.com">mconway@kelleydrye.com</a>  Their Counsel	Alexander E. Gertsburg Vice President/General Counsel Broadvox, Inc. 1228 Euclid Avenue, Suite 390 Cleveland, Ohio 44115 (216) 373-4811 (telephone) (216) 373-4812 (facsimile) <a href="mailto:agertsburg@broadvox.com">agertsburg@broadvox.com</a>
With a copy to:  John A. Harwood Vice President and General Counsel Cypress Communications 4 Piedmont Center, Suite 600 3565 Piedmont Road Atlanta, Georgia 30305 (404) 442-0169 (telephone) <a href="mailto:jharwood@cypresscom.net">jharwood@cypresscom.net</a>	With a copy to:  Jeff Slater Broadvox, Inc. Vice President Regulatory Affairs 1950 N. Stemmons Freeway Dallas, Texas 75207 (214) 646-8035 (telephone) (216) 373-4828 (facsimile) <a href="mailto:jslater@broadvox.com">jslater@broadvox.com</a>



### **III. DESCRIPTION OF THE TRANSACTION**

Pursuant to the terms of an Agreement and Plan of Merger (“Agreement”) dated October 12, 2010 by and among Broadvox Parent; Broadvox; CCI Acquisition Corp. (“CCI Acquisition,” a newly formed wholly-owned subsidiary of Broadvox); and THC, CCI Acquisition will merge with and into THC. THC will be the surviving corporation and will continue in existence as a wholly-owned subsidiary of Broadvox. Thus, Cypress will become a wholly-owned indirect subsidiary of Broadvox following consummation of the Transaction. Immediately before closing the Transaction, Arcapita will reorganize the corporate structure of Cypress. This *pro forma* reorganization is for tax purposes and is intended to facilitate the Transaction. Once the proposed Transaction is closed, Arcapita will have no ongoing equity interests in either Cypress or Broadvox, and no form of control or management oversight.

The Transaction will be transparent to Cypress’s customers. All existing customers of Cypress will continue to be served by Cypress pursuant to its existing telecommunications authorizations. The operations of Broadvox’s other subsidiaries will not be affected by the Transaction described herein.

Diagrams of the corporate structure of Cypress immediately prior to closing the Transaction are provided in **Exhibit C**. A diagram of the corporate structure of Cypress after merging into Broadvox is provided in **Exhibit D**.

### **IV. PUBLIC INTEREST STATEMENT**

The Transaction described herein will serve the public interest. Arcapita’s support over the past five (5) years has transformed Cypress into an innovative, world-

class provider of TDM- and IP-based communications services. However, Arcapita is not a communications service provider; its interest in Cypress has always been strictly for the purposes of investment. Arcapita has determined that its continued ownership and control of Cypress is no longer consistent with its investment objectives. Accordingly, Arcapita has elected to exit from Cypress.

The financial, technical, and managerial resources that Broadvox will bring to Cypress will further enhance Cypress's ability to compete in the telecommunications and information services marketplace. Broadvox and its current subsidiaries are established providers of IP-based services to wholesale and business customers. Broadvox's history of providing quality service to its customers demonstrates that Broadvox is legally, technically, and financially qualified to own and operate Cypress as proposed in the Agreement.

At the same time, the proposed transaction will have no adverse impact on Cypress's current customers. These customers will continue to receive their existing services at the same rates, terms and conditions as at present. Any future changes to the rates, terms and conditions of service will be made consistent with Commission requirements. The only significant change following the closing of the transaction from the customers' perspective will be that Broadvox will be the new owner of Cypress. Any future consolidation of the operations of Cypress into or with other Broadvox operating companies, such that customers would see a change in their service provider, would be undertaken pursuant to the Commission's rules and notice requirements.<sup>1</sup>

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<sup>1</sup> The contemplated transfer of control does not raise any slamming concerns or necessitate compliance with Federal Communications Commission or state procedures to notify customers prior to a carrier-to-carrier sale or transfer of subscribers as the contemplated transaction does not involve any change

Furthermore, the proposed transaction does not present any anti-competitive concerns. The merger of Cypress and Broadvox will not have an adverse effect on competition in the markets for local, intrastate toll, or domestic interstate telecommunications services, since no Broadvox entity currently provides regulated telecommunications services. Cypress and BroadvoxGO both offer an unregulated retail VoIP service to small- and medium-sized business customers in a number of markets. However, in each of the top ten retail markets for the combined company post-close – Dallas/Houston, TX; Los Angeles, CA; Miami, FL; Chicago, IL; Greater New York City, NY; Philadelphia, PA; Seattle, WA; Phoenix, AZ; Cleveland, OH; and the Washington, DC metro area – Broadvox will have a market share well under 5 percent. Furthermore, Broadvox will face fierce competition from established service providers in these markets, including but not limited to AT&T, AireSpring, Bandwidth.com, Cbeyond, MegaPath, NexVortex, PAETEC, Verizon, Voxitas, and XO.

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in a customer's existing service provider. Cypress' customers will remain with their company and will continue to be served under its existing authorization.

V. **CONCLUSION**

Based on the foregoing, the Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by grant of this Application.

Respectfully submitted,

The Broadvox Holding Company, LLC

Cypress Communications  
Operating Company, LLC

TechInvest Holding Company,  
Inc.

By: \_\_\_\_\_

By: \_\_\_\_\_

Alexander E. Gertsburg  
Vice President/General Counsel  
Broadvox, Inc.  
1228 Euclid Avenue, Suite 390  
Cleveland, Ohio 44115  
(216) 373-4811 (telephone)  
(216) 373-4812 (facsimile)  
[agertsburg@broadvox.com](mailto:agertsburg@broadvox.com)

Joan M. Griffin  
Melissa S. Conway  
Kelley Drye & Warren LLP  
3050 K Street, NW  
Suite 400  
Washington, D.C. 20007  
Tel: (202) 342-8552  
Fax: (202) 342-8451  
[mconway@kelleydrye.com](mailto:mconway@kelleydrye.com)

Their Counsel

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