

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Frontier Communications of)	WC Docket No. 06-6
America, Inc. for Preemption and Declaratory)	
Ruling Regarding Tennessee Code)	
Annotated Section 65-29-102 and Related)	
Decisions of the Tennessee Regulatory)	
Authority)	

Reply Comments of Frontier Communications of America, Inc.

Kenneth F. Mason
Director – Federal Regulatory

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Date: March 8, 2006

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of Frontier Communications of America, Inc. for Preemption and Declaratory Ruling Regarding Tennessee Code Annotated Section 65-29-102 and Related Decisions of the Tennessee Regulatory Authority)	WC Docket No. 06-6

Reply Comments of Frontier Communications of America, Inc.

Introduction

Frontier Communications of America, Inc. (“Frontier”) hereby submits its reply comments in the above captioned matter pursuant to the Commission’s January 19, 2006 Public Notice.¹ Only Ben Lomand Rural Telephone Cooperative (“Ben Lomand”) out of the three commenting parties attempts to justify the prohibition in Tennessee Code Ann. §65-29-102 against competition in the territories of telephone cooperatives as passing muster under §253(a) of the Telecommunications Act. Ben Lomand’s general and conclusory allegations, however, fail to hide the blatantly anticompetitive nature of the statute, and Ben Lomand’s plea for an exemption from competition rings hollow in light of its own foray outside of its statutorily protected boundaries to compete with Frontier’s affiliate Incumbent Local Exchange Carrier (“ILEC”).

The primary argument made in the three filings in opposition to Frontier’s Petition is the claim that Frontier, allegedly lacking a statewide certificate of authority to act as a Competitive Local Exchange Carrier (“CLEC”), should have first petitioned the Tennessee Regulatory

¹ Public Notice, DA 06-81 (released January 19, 2006).

Authority (“TRA”) for an amendment of its certificate and as a result is not entitled to petition the Commission to preempt the anticompetitive statute. As will be shown herein, these arguments are without merit because (1) Frontier already has a statewide certificate of authority that requires no amendment; and (2) the only stated basis for claiming that Frontier’s certificate is limited is the anticompetitive state statute itself, thus establishing that the argument of Frontier’s opponents is wholly circular.

Ben Lomand has now forestalled competition in its territory for more than 18 months since execution of the interconnection agreement, all the while it continues to compete through an affiliate as a CLEC in Frontier’s ILEC territory. The Commission should see through Ben Lomand’s procedural ploy and issue the declaratory ruling requested by Frontier.

I. Tennessee Code Annotated §65-29-102 Is Blatantly Anticompetitive.

Neither the TRA nor the Tennessee Cooperatives attempt to justify Tennessee Code Ann. §65-29-102 in light of 47 U.S.C. §253, which overrides a state statute that has the effect of prohibiting any entity from providing any interstate or intrastate telecommunications service unless the statute is shown to be, among other things, competitively neutral. The Commission’s preemption analysis set forth in a nearly identical case, the *Hyperion Preemption Order*,² turns primarily upon whether the challenged state restriction is “competitively neutral,” and a finding that the restriction is not competitively neutral is fatal to the restriction.³

² *In The Matter Of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion’s Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas*, Memorandum Opinion and Order, CC Docket No. 98-92, 14 FCC Rcd 11064 (1999), *pet. for reh’g den.*, 16 FCC Rcd 1247 (2001) (“**Hyperion Preemption Order**”).

³ *Hyperion Preemption Order*, ¶¶8, 18; 47 U.S.C. § 253(b).

Only Ben Lomand attempts to make the case that the statute is competitively neutral. Ben Lomand's entire showing on this point is an assertion that competition from Frontier would drain revenue from Ben Lomand's profitable customers, which would be "to the detriment of the residential customers of Ben Lomand."⁴ If this were a valid consideration, then all competition should be prohibited forthwith, Ben Lomand should retain its monopoly ILEC status⁵ forever, and presumably all other ILECs should be re-established as monopolies. Nowhere in this argument does Ben Lomand even begin to establish a claim that the statute is competitively neutral.

Ben Lomand also complains that Frontier has received authority from the TRA to price services below a statutory price floor.⁶ This argument is a pure smokescreen. The "Frontier" that has obtained this authority is Frontier's ILEC Citizens Telecommunications Company of Tennessee, not Frontier Communications of America. This price floor does not apply either to Ben Lomand's ILEC or to its CLEC, nor did it ever apply to Frontier Communications of America, which is Frontier's CLEC. The Frontier ILEC's relief from this price floor has nothing to do with Frontier Communications of America's CLEC entry into Ben Lomand's ILEC territory.

Finally, Ben Lomand takes its arguments to the extreme by alleging that it could even be forced out of business by Frontier's competition.⁷ Apparently Ben Lomand, one of the last ILECs in the United States with a statutory monopoly, is afraid that it cannot compete successfully within its own territory. Public policy has long since passed beyond this kind of argument. The appropriate inferences that the Commission should draw from Ben Lomand's

⁴ Ben Lomand Comments, p. 5.

⁵ Under Tennessee law, Ben Lomand as a cooperative is not an ILEC that would have been entitled to territorial protection under Tenn. Code Ann. § 65-4-201(d), the small ILEC statute that was at issue in the *Hyperion Preemption Order*. See Tenn. Code Ann. § 65-4-101(a)(5) and (d). Due to its cooperative status, Ben Lomand does not file tariffs with the TRA.

⁶ Ben Lomand Comments, pp. 5-6.

⁷ Ben Lomand Comments, p. 6.

argument are that Ben Lomand is earning super-competitive monopoly profits, and that Ben Lomand is concerned that only these monopoly profits allow it to survive. Otherwise Ben Lomand should have no concern about going out of business as a result of competition. It is obviously long past time for Ben Lomand to experience the same kind of competition within its territory that it so freely engages in outside of its territory. It is long past time for Ben Lomand's captive customers to see the benefits of competition.

The competitive situation between Frontier and Ben Lomand proves conclusively that the statute is not competitively neutral. Ben Lomand and Frontier have adjoining ILEC territories. Ben Lomand competes through its affiliated CLEC in Frontier's ILEC territory, and in fact has taken away a large percentage of Frontier's ILEC customers. The statute, as interpreted by the TRA, does not permit Frontier's CLEC to compete in Ben Lomand's ILEC territory. There could hardly be a clearer example of a failure of competitive neutrality.⁸

II. Frontier Has a Statewide Certificate.

All three parties commenting in opposition to Frontier's petition allege that Frontier does not have a statewide certificate of convenience and necessity. Frontier is at a loss to understand this position. Attached as ***Exhibits 1 and 2***, respectively, are the 1996 TRA order granting Frontier's certificate, and the Administrative Law Judge's Initial Order that the TRA adopted as its own. Relevant portions of the Initial Order include the following statements: "Application [sic] requests a Certificate to offer these services on a statewide basis."⁹ ... I find

⁸ Ben Lomand argues that the TRA must be given an opportunity under the statute to determine whether there is a lack of "reasonably adequate telephone service" in its protected territory, which lack would end the statutory monopoly granted by Tenn. Code Ann. §65-29-102. Ben Lomand Comments, p. 4. The proposal of such an inquiry falls far short of any kind of competitive neutrality. No such inquiry or showing was required before Ben Lomand's CLEC entered into Frontier's ILEC territory. If the TRA were to make such an inquiry and were to find that Ben Lomand's service was "reasonably adequate", that result would only further underline the lack of competitive neutrality and the unfair and unlawful monopoly protection granted by the statute to telephone cooperatives.

⁹ Initial Order, p. 1.

that the requested certificate should be granted.¹⁰ ... IT IS THEREFORE ORDERED: 1. That the application of Citizens ... to provide service statewide is hereby granted.”¹¹

The parties opposing Frontier’s Petition argue that Frontier should have petitioned the TRA for an amendment to its certificate, and that for this reason Frontier’s Petition is premature.¹² Given the explicit grant of statewide authority in the certificate, it is difficult to understand exactly what amendment Frontier is supposed to have requested. Frontier does not need to amend its certificate from “statewide” to “statewide”. Ben Lomand and the Tennessee Cooperatives were given every opportunity in the certification proceeding to appeal if they objected to the order. Both the Initial Order and the final TRA Order explicitly gave any aggrieved party the remedy of filing a Petition for Reconsideration. Ben Lomand and the Tennessee Cooperatives filed no such petition, nor did they appeal from the TRA’s grant of Frontier’s statewide certificate. The fact of the matter is that it is not Frontier that is coming to the Commission too early, but instead it is Ben Lomand and the Tennessee Cooperatives that are raising their objections to Frontier’s certificate nearly 10 years too late.

Frontier is surprised by the TRA’s procedural objection to Frontier’s Petition. Although the transcript of the TRA’s action in November 2005 indicates a belief on the part of the Commissioners that Frontier lacked a statewide certificate of authority, this transcript falls far short of an order retroactively amending and restricting the statewide certificate of authority that the TRA granted Frontier in 1996.¹³ The certificate speaks for itself. The opinions in the

¹⁰ Initial Order, p. 2.

¹¹ Initial Order, p. 5.

¹² Opposition of TRA, p. pp. 7-8; Ben Lomand Comments, p. 4; Tennessee Cooperatives Comments, p. 11.

¹³ The TRA explicitly amended the CLEC certificate in the Hyperion case to areas of Tennessee served by ILECs with more than 100,000 lines. *Hyperion Preemption Order*, ¶4. For this reason, it was necessary for Hyperion to seek an amendment. There is no such need in Frontier’s case.

November 2005 transcript do not alter what the certificate actually says. The certificate requires no amendment.

Moreover, two of the three TRA Commissioners participating in the November 2005 deliberations expressed on the record their belief that Frontier should pursue this matter at the FCC. Director Miller stated “for the record that this complaint might be more appropriately handled at the FCC.”¹⁴ Director Tate suggested that the company pursue relief at the FCC in addition to requesting the TRA to expand its certificate.¹⁵ Thus, the majority view of the Commissioners at the hearing was that it would be appropriate for Frontier to seek relief from the FCC.

III. The Only Argument That Frontier’s Certificate Is Not Statewide Is Circular.

No commenting party offers any basis for the mistaken assertion that Frontier’s certificate is not statewide other than the statute itself that is the subject of Frontier’s petition. The logical flow of the argument is that Frontier’s certificate cannot be statewide despite its express terms because the statute exempted, and continues to exempt, telephone cooperatives such as Ben Lomand from competition. In other words, these parties are arguing that Frontier cannot be heard to ask for relief from the statute because of the statute itself. This argument is obviously circular and falls of its own weight. Because it is only the statute itself that even arguably prevents Frontier’s certificate from being “really truly” statewide, it follows that Frontier has fully exhausted its remedies at the TRA. The only basis for the TRA to deny Frontier’s Petition for Declaratory Ruling was that the statute bars the TRA from allowing Frontier to compete in Ben Lomand’s territory. Otherwise Frontier’s certificate would be “really truly”

¹⁴ Transcript of November 7, 2005 hearing, attached hereto as Exhibit 3, p. 2.

¹⁵ Transcript of November 7, 2005 hearing, pp. 4-5.

statewide. Accordingly, the TRA's November 2005 action rests squarely and solely on the statute, and Frontier is properly before this Commission to petition for the preemption of the statute.

It is far from clear that the TRA would even entertain an amendment of Frontier's certificate from "statewide" to "statewide." When the TRA denied Frontier's Petition for Declaratory Ruling, Director Miller stated that he did not find "specific language contained within existing state law that would permit the TRA to grant authority to CLECs to serve territories served by telephone cooperatives."¹⁶ If Frontier were to be sent back to the TRA to seek an amendment of its certificate from "statewide" to "statewide", under this analysis the result could only be the same – a denial of Frontier's request and a continuation of Ben Lomand's unjustifiable monopoly status for another year and maybe longer.

IV. Conclusion: Justice Delayed Would Be Justice Denied.

Ben Lomand has now been stalling competition for well over a year while it continues to engage in exactly the same kind of "edge-out" competition that Frontier has been anxious to begin in the other direction since 2004. The Interconnection Agreement was executed on July 6, 2004. Ben Lomand managed to drag out the TRA proceeding on Frontier's Petition for Declaratory Ruling from October 26, 2004 to November 7, 2005. If Frontier were sent back to the TRA to seek an unnecessary amendment of its Tennessee certificate from "statewide" to "statewide," Ben Lomand would probably get at least another year of unjustifiable monopoly protection. Such a result would be antithetical to the public policy of the United States, which is a policy of "opening all telecommunications markets to competition."¹⁷

¹⁶ Transcript of November 7, 2005 hearing, p. 4.

¹⁷ Conference Report on S. 652, Telecommunications Act of 1996, January 31, 1996 *Congressional Record - House*, p. H 1079.

This case is very simple. Based on an anticompetitive statute, the TRA has refused to allow Frontier to enter the statutorily protected territory of a telephone cooperative, while at the same time the cooperative is actively competing in Frontier's territory. This situation has been going on for an extended period of time and it is past time for it to end.

Quite naturally the cooperative, with the support of its fellow cooperatives, is throwing up every procedural argument it can muster to protect its unjustifiable monopoly. This has led to Ben Lomand's arguing out of one side of its mouth before the TRA and out of the other side of its mouth before this Commission. When it was before the TRA, Ben Lomand argued that "the TRA does not have jurisdiction to determine if the 1996 Telecommunications Act preempts state law. ... Preemption must be considered by the FCC in the process of a hearing, with notice and opportunity for public comment."¹⁸ Now that it is before the FCC, Ben Lomand argues that only the TRA can decide this case, and that it should be decided on the basis of the state statute.¹⁹ If this case were sent back to the TRA, no doubt Ben Lomand would go back to its position that only the FCC can overturn the statute.

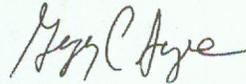
The Commission should see through these procedural ploys to the heart of the matter, that Ben Lomand has an unlawful statutory monopoly, that it has used this statutory monopoly to forestall competition for well over a year, and that the TRA is unwilling to overturn this

¹⁸ Ben Lomand Reply Brief to the TRA, p. 4 (June 15, 2005).

¹⁹ Ben Lomand Comments, p. 4.

blatantly anticompetitive statute. Frontier respectfully submits that the only fair, reasonable and lawful result is for the Commission to grant the relief requested by Frontier.

Respectfully Submitted,



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Date: March 8, 2006

Attachments: Exhibits 1-3

EXHIBIT 1

FAXED

JUL 02 1996

11-5-99

FILE

**BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
Nashville, Tennessee**

June 27, 1996

**IN RE: APPLICATION OF CITIZENS TELECOMMUNICATIONS
COMPANY, D/B/A CITIZENS TELECOM FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY**

DOCKET NO. 96-00779

ORDER

This matter is before the Tennessee Public Service Commission upon the application of Citizens Telecommunications Company, d/b/a Citizens Telecom ("Citizens") for a Certificate of Convenience and Necessity pursuant to TCA § 65-4-201 (c) as set forth in the above caption.

The matter was heard on May 15, 1996, in Nashville Tennessee, before Ralph B. Christian, II, Administrative Judge. On May 30, 1996, the Administrative Judge issued his Initial Order recommending that the application be granted.

The Public Service Commission considered this matter at a regularly scheduled Commission Conference held on June 25, 1996. It was concluded after careful consideration of the entire record, including the Administrative Judge's Initial Order and all applicable laws and statutes and particularly the requirements of Chapter 408 of the Public Acts of 1995, that the Administrative Judge's Initial Order should be approved and the authority granted as requested. The Commission further ratifies and adopts the findings and conclusions of the Administrative Judge as its own.

IT IS THEREFORE ORDERED:

1. That the Administrative Judge's Initial Order, dated May 30, 1996, in this docket is hereby ratified, adopted and incorporated by reference in this Order as fully as though copied verbatim herein, including the findings and conclusions of the Administrative Judge which the Commission adopts as its own;

2. That the application of Citizens Telecommunications Company d/b/a Citizens Telecom for a Certificate of Convenience and Necessity as a Competing Telecommunications Service Provider pursuant to Section 7 of Chapter 408 of the Public Acts of 1995 is hereby granted;

3. That Citizens is authorized to offer all of the services that may be provided by a Competing Telecommunications Service Provider, as that term is defined in Section 3 of Chapter 408, TCA §65-4-101 (e); those services include, but are not limited to toll, local exchange, access, private line, paging and enhanced services, Centrex services, measured business lines, voice mail, ISDN, and vertical factors;

4. That Citizens abide by the rules and regulations of the Commission;

5. That Citizens may commence service under its certificate once it has filed proper tariffs for service to be offered and such other information as the Public Service Commission may require;

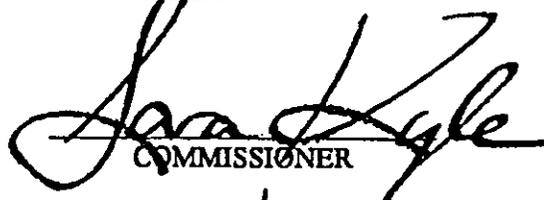
6. That any party aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Tennessee Public Service Commission within ten (10) days from and after the date of this order; and

7. That any party aggrieved by the Commission's decision in this matter may file a Petition for Review with the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

ATTEST:


Eddie Robinson
Executive Director


CHAIRMAN


COMMISSIONER

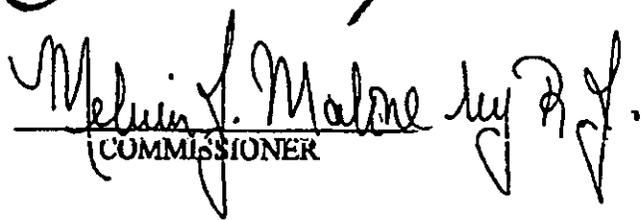

COMMISSIONER

EXHIBIT 2

TENNESSEE PUBLIC SERVICE COMMISSION
460 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-0505

JUN 06 1996



May 30, 1996

Mr. Charles W. Cook, II
Attorney at Law
424 Church Street, Suite 2800
Nashville, Tennessee 37219

**IN RE: APPLICATION OF CITIZENS TELECOMMUNICATIONS
COMPANY, D/B/A CITIZENS TELECOM FOR A CERTIFICATE
OF PUBLIC CONVENIENCE AND NECESSITY**

DOCKET NO. 96-00779

Dear Mr. Cook:

I have enclosed a copy of the Initial Order of the Administrative Judge in the case noted above.

The Commission will review all of the issues addressed by the Judge in his decision and will provide all parties an opportunity to express their opinion of the findings of the Judge.

Enclosed is a copy of the Order setting the matter for review. This order does not affect your right to request reconsideration of the Initial Order of the Administrative Judge.

Sincerely,

A handwritten signature in black ink that reads "Eddie Roberson".

Eddie Roberson
Executive Director

Enclosures

**BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION
NASHVILLE, TENNESSEE**

May 30, 1996

**IN RE: APPLICATION OF CITIZENS TELECOMMUNICATIONS COMPANY,
D/B/A CITIZENS TELECOM FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY AS COMPETING
TELECOMMUNICATIONS SERVICE PROVIDER**

Docket No. 96-00779

INITIAL ORDER

This matter is before the Tennessee Public Service Commission upon the application of Citizens Telecommunications Company, d/b/a Citizens Telecom (hereinafter the "Applicant" or "Citizens Telecom") for a Certificate of Public Convenience and Necessity ("Certificate") to become a Competing Telecommunications Service Provider as defined by T.C.A. §65-4-101(e). The Applicant has filed this application as a Competing Telecommunications Service Provider pursuant to Section 7 of Chapter 408 of the Public Acts of 1995, codified at T.C.A. §65-4-201(c). Applicant seeks authority to operate statewide and to provide a full array of telecommunications services as would normally be provided by an incumbent local exchange telephone company. Application requests a Certificate to offer these services on a statewide basis.

Notice of this application has been served upon incumbent local exchange carriers and other interested parties.

The matter was heard on May 15, 1996, in Nashville, Tennessee, before Ralph B.

Christian, II, Administrative Judge, at which time the following appearances were entered:

APPEARANCES:

CHARLES W. COOK, III, Attorney at Law, STOKES & BARTHOLOMEW, P.A.
424 Church Street, Suite 2800, Nashville, Tennessee 37219, appearing on behalf of the Applicant.

BRYAN C. SPEILMAN, Group Product Manager - Local Products - for Citizens Utilities, Applicant's parent company, testified in support of the application.

No other witnesses testified. No parties opposed the application. BellSouth Telecommunications, Inc. filed a Motion to Intervene, but did not otherwise enter an appearance or oppose the application.

Based upon the application, the testimony and exhibits presented at the hearing and the entire record of this proceeding, I find that the requested certificate should be granted. In support of those decisions, I hereby make the following findings of fact and conclusions of law:

Citizens Telecom seeks authority to offer within its certificated area all legally allowed telecommunications services. Such services include, but are not limited to, those normally provided by an incumbent local exchange telephone company, local exchange and exchange access services, dedicated and switched access services and private line services, Centrex services, measured business lines, voice mail, ISDN, and vertical factors. Applicant also intends to expand the scope of its interexchange retail authority, awarded in Case No. 95-03786. Mr. Speilman testified that this expansion may be necessary because the Applicant is installing long distance switching capacity in Powell, Tennessee.

Mr. Speilman stated that Applicant's services will be conducted through the use of owned and leased facilities, resale of other local exchange carrier's retail products and the use of unbundled network elements obtained from incumbent local exchange carriers.

Mr. Speilman testified that Applicant will adhere to all applicable Commission policies, rules and orders. Mr. Speilman stated that the two Citizens incumbent local exchange carriers do not claim entitlement to the exemptions from competition contained in T.C.A. §65-4-201(d).

Applicant is a Delaware corporation authorized to do business in the State of Tennessee. It is currently certified as an interexchange reseller in Tennessee. It is headquartered in Stamford, Connecticut. Applicant was originally created to provide interexchange services throughout the United States.

Applicant is a subsidiary of Citizens Utilities Company, a publicly-traded Delaware Corporation which is the parent corporation of a number of local exchange carriers conducting operations in twelve (12) states. Two of those companies, Citizens Telecommunications Company of Tennessee, LLC and Citizens Telecommunications Company of the Volunteer State, LLC conduct local exchange operations in Tennessee. Citizens Utilities and its subsidiaries are also referred to as the "Citizens Utilities Company family of local exchange providers".

Mr. Speilman avers that Applicant's principal corporate officers have substantial managerial experience in the telecommunications field. Mr. Speilman testified that the Citizens Utilities Company, through its family of local exchange carriers, and Applicant has operated in this state since 1993. Its management and technical capabilities, as are more fully

described in its application, are well-known to the Commission. Mr. Speilman further testified that Applicant is funded from advances from Citizens Utilities Company, whose financial strength is demonstrated in the 1995 audited financial statements found in its 1995 Annual Report.

Based upon the facts as described in the Applicant's application and exhibits including, but not limited to, Citizens Utilities Company's 1995 Annual Report and in the testimony of Mr. Speilman, I find that the Applicant possesses sufficient managerial, financial and technical ability to provide the telecommunications services it proposes. Therefore, the Applicant meets the statutory criteria for the award of operating authority as a Competing Telecommunications Service Provider under T.C.A. §65-4-201(c).

In accordance with Section 16 of Chapter 408, Applicant has filed a small and minority owned telecommunications businesses participation plan. The plan, filed on or about April 25, 1996, fulfills the statutory requirements of Section 16. Mr. Speilman testified that the Applicant is committed to implementation of the plan.

Approval of the application will serve the public interest by creating greater competition in the intrastate telecommunications marketplace. In particular, the public will benefit both directly, through the use of competitive telecommunications services to be offered by the Applicant, and indirectly because the presence of the Applicant in the market will increase the incentives for other telecommunications services providers, including the incumbent local exchange carrier, to operate more efficiently, offer more innovative services, and improve the quality of service.

WHEREFORE, based upon the foregoing findings and conclusions, I find that the public convenience and necessity will be served by the issuance of a certificate to the Applicant.

IT IS THEREFORE ORDERED:

1. That the application of Citizens Telecommunications Company, D/B/A Citizens Telecom for a certificate of public convenience and necessity as a competing telecommunications service provider pursuant to Section 7 of Chapter 408 of the Public Acts of 1995, T.C.A. §65-2-201(c), to provide service statewide is hereby granted;
2. That the Citizens Telecommunications Company, D/B/A Citizens Telecom is authorized to offer all of the services that may be provided by a Competing Telecommunications Service Provider, as that term is defined in Section 3 of Chapter 408, T.C.A. §65-4-101(e); those services include, but are not limited to, toll, local exchange, access, private line, paging and enhanced services, Centrex services, measured business lines, voice mail, ISDN, and vertical factors ;
3. That the Citizens Telecommunications Company, D/B/A Citizens Telecom may commence service under its certificate once it has filed proper tariffs for service to be offered and such other information required by the Commission;
4. That any party aggrieved by the Commission's decision in this matter may file a petition for Reconsideration with the Tennessee Public Service Commission within ten (10) days from and after the date of this Order.

5. That any party aggrieved by the Commission's decision in this matter may file a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.



RALPH B. CHRISTIAN, II
ADMINISTRATIVE JUDGE

EXHIBIT 3

BEFORE THE TENNESSEE REGULATORY AUTHORITY

**CERTIFIED
COPY**

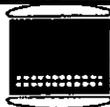
TRANSCRIPT OF EXCERPT OF AUTHORITY CONFERENCE

Monday, November 7, 2005

APPEARANCES:

For Chattanooga Gas Company:	Mr. L. Craig Dowdy
For NuVox: (by telephone)	Mr. John J. Heitman Ms. Susan Berlin
For Sprint Nextel: (by telephone)	Mr. Daniel M. Waggoner
For Sprint Nextel:	Mr. Edward Phillips
For TRA Staff:	Mr. Richard Collier Ms. Sharla Dillon

Reported By:
Jennifer B. Carollo, RPR, CCR



NASHVILLE COURT REPORTERS

P.O. Box 290903
Nashville, TN 37229-0903
(615) 885-5798 • (800) 552-DR:PO
Fax (615) 885-2621

1 (The aforementioned Authority
2 conference came on to be heard on Monday, November 7,
3 2005, beginning at approximately 1 p.m., before
4 Chairman Ron Jones, Director Sara Kyle, Director
5 Deborah Taylor Tate, and Director Pat Miller. The
6 following is an excerpt of the proceedings that were
7 had, to-wit:)

8
9 MS. DILLON: Next we have Section 2,
10 Directors Miller, Kyle, and Tate.

11 Docket No. 04-00379, Frontier
12 Communications, Inc. Petition of Frontier
13 Communications, Inc., for a declaratory ruling.
14 Consider motion to dismiss.

15 DIRECTOR KYLE: On October 26, 2004,
16 the petition of Frontier Communications, Inc., for a
17 declaratory ruling was filed with the Authority.
18 Frontier asked the Authority to declare that it has the
19 authorization to compete in the territory of Ben Lomand
20 Rural Telephone Cooperative, Inc.

21 On December 8, 2004, Ben Lomand filed
22 the answer and motion to dismiss of Ben Lomand Rural
23 Telephone Cooperative, Inc.

24 During the December 13, 2004,
25 Authority conference, the panel voted unanimously to

1 convene a contested case proceeding in this matter to
2 determine the issues set forth in the petition.

3 I have a motion that I would be glad
4 to hear from my colleagues if you have something to say
5 on this issue. If not I recommend -- I would move to
6 grant the motion to dismiss as filed by Ben Lomand with
7 respect to the petition for declaratory ruling
8 submitted by Frontier Communications, Inc. I find that
9 Frontier, then known as Citizens Communication, when
10 requesting authority to provide competing telephone
11 service was not granted statewide approval to provide a
12 competing service. The 1996 order did not extend
13 Citizens authority statewide to enter into territories
14 of small telephone carriers or cooperatives, and it was
15 clearly not my intent nor was it supported in the
16 record.

17 I believe it is appropriate to
18 dismiss the petition of Frontier at this time as it
19 simply asks for relief that cannot be granted given its
20 current certificate of convenience and necessity. And
21 I so move.

22 (Pause.)

23 DIRECTOR MILLER: I'll second your
24 motion and vote aye. First of all, from an equity
25 standpoint, I believe that Frontier has a reasonable

1 argument. However, after reviewing the pleadings and
2 applicable statutory provisions, I do not find specific
3 language contained within existing state law that would
4 permit the TRA to grant authority to CLECs to serve
5 territories served by telephone cooperatives.

6 I am also convinced that prior to the
7 1995 act this agency did not have authority to allow
8 competitive entry into areas served by cooperatives.
9 Furthermore, nothing in the 1995 state act explicitly
10 changed or otherwise granted jurisdiction of this
11 agency over telephone cooperative service areas.

12 So I think with respect to state law,
13 the legislature is where I would have to point for
14 Citizens to seek relief. Accordingly, I move that -- I
15 agree with Director Kyle and would state for the record
16 that this complaint might be more appropriately handled
17 at the FCC.

18 DIRECTOR TATE: I will agree in the
19 outcome. However, I would also like to point out that
20 at least two other companies have come before us to
21 expand their CCNs to enable it to extend service into
22 previously restricted areas. So I'm not in any way
23 prejudging that issue and whether or not it might come
24 before us in the future and that -- that there are
25 other appropriate procedural avenues other than the

1 ones that are before us today. As Director Miller
2 noted the FCC, in addition, to a company's requests to
3 expand its CCN instead of a declaratory ruling.

4 So I think with that said, I will be
5 in agreement with the conclusion of your motion.

6 DIRECTOR KYLE: Thank you.

7 (Excerpt of Proceedings
8 concluded.)

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REPORTER'S CERTIFICATE

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

I, Jennifer B. Carollo, Registered Professional Reporter, Certified Court Reporter, and Notary Public for the State of Tennessee, hereby certify that I reported the foregoing proceedings at the time and place set forth in the caption thereof; that the proceedings were stenographically reported by me; and that the foregoing proceedings constitute a true and correct transcript of said proceedings to the best of my ability.

I FURTHER CERTIFY that I am not related to any of the parties named herein, nor their counsel, and have no interest, financial or otherwise, in the outcome or events of this action.

IN WITNESS WHEREOF, I have hereunto affixed my official signature and seal of office this 7th day of December, 2005.



Jennifer B. Carollo

JENNIFER B. CAROLLO,
REGISTERED PROFESSIONAL
REPORTER, CERTIFIED COURT
REPORTER, AND NOTARY PUBLIC
FOR THE STATE OF TENNESSEE

My Commission Expires:
June 1, 2008

CERTIFICATE OF SERVICE

WC Docket No. 06-6

I, Gregg C. Sayre, do certify that on March 8, 2006, the aforementioned **Reply Comments of Frontier Communications** were electronically filed with the Federal Communications Commission through its Electronic Comment Filing System and were mailed to the following as indicated below:

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Gregg C. Sayre