

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**  
**NASHVILLE, TENNESSEE**

IN RE:	May 18, 2006	)	
		)	
PETITION OF CITIZENS TELECOMMUNICATIONS		)	DOCKET NO.
COMPANY OF TENNESSEE LLC FOR EXEMPTION		)	03-00211
UNDER TENN. CODE ANN. § 65-5-208(c)		)	

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**ORDER GRANTING PETITION FOR EXEMPTION UNDER**  
**TENN. CODE ANN. § 65-5-108(c)**

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This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 12, 2005, for consideration of the *Petition for Exemption Under Tenn. Code Ann. § 65-5-208(c)*<sup>1</sup> (“*Petition for Exemption*”) filed by Citizens Telecommunications Company of Tennessee, LLC (“Citizens”).

**BACKGROUND**

Citizens filed its *Petition for Exemption* on March 19, 2003. Ben Lomand Communications, Inc. (“Ben Lomand”) filed a *Petition to Intervene and/or Response or Motion to Dismiss of Ben Lomand Communications, Inc.* (“*Petition to Intervene*”) on April 10, 2003. On May 8, 2003, Citizens filed a response<sup>2</sup> to Ben Lomand’s *Petition to Intervene*, and Ben Lomand subsequently filed *Ben Lomand Communications, Inc.’s Motion for Leave to File a Reply to Citizens’ Response* (“*Motion for Leave to File a Reply*”) on May 12, 2003.

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<sup>1</sup> The Petition was filed pursuant to Tenn. Code Ann. § 65-5-208(c), however this section was re-codified in 2004 as 65-5-108(c).

<sup>2</sup> See *Response of Citizens Telecommunications Company of Tennessee, LLC to Motion Filed by Ben Lomand Communications, Inc. to Intervene and/or Dismiss the Petition for Exemption Under T.C.A. § 65-5-208(c)* (May 8, 2003).

During a regularly scheduled Authority Conference held on July 7, 2003, the panel voted unanimously to hold this proceeding in abeyance pending the resolution of TRA Docket No. 02-01221<sup>3</sup> because of the similarity of issues being raised by the parties, Ben Lomand and Citizens, in Docket No. 02-01221.<sup>4</sup> In that docket, Ben Lomand filed a complaint alleging that Citizens had engaged in discriminatory and anti-competitive practices as a result of a tariff filed on April 11, 2002, which was offered only to customers in its McMinnville and Sparta exchanges.<sup>5</sup> On May 25, 2004, Ben Lomand filed a motion to withdraw its complaint and the Hearing Officer in Docket No. 02-01221 granted the withdrawal on June 2, 2004.<sup>6</sup> After the resolution of Docket No. 02-01221, on September 15, 2004, Citizens filed in this docket the *Petitioner's Motion to Revive Docket, Appoint Hearing Officer and Schedule a Status Conference* ("Motion to Revive").

The panel considered Citizens' *Motion to Revive* during the September 27, 2004 Authority Conference. At that time the panel voted unanimously to reactivate this docket and convene a contested case to consider Citizens' *Petition for Exemption*. The panel reactivated this case after finding that this docket no longer needed to be held in abeyance due to the withdrawal of Ben Lomand's complaint in Docket No. 02-01221.<sup>7</sup> The panel voted unanimously to grant intervention to Ben Lomand. The panel proceeded to deny Ben Lomand's *Motion for Leave to File a Reply*, and voted unanimously to deny Ben Lomand's motion to dismiss Citizens' *Petition for Exemption*. Thereafter, the panel appointed the Authority's General Counsel or his designee to act as the Hearing Officer in this matter to hear preliminary matters prior to the Hearing and to set a procedural schedule to completion.

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<sup>3</sup> See *In re: Complaint of Ben Lomand Communications, Inc. Against Citizens Communications Company of Tennessee LLC d/b/a Frontier Communications of Tennessee*, Docket No. 02-01221.

<sup>4</sup> See *Order Holding Docket in Abeyance* (October 21, 2003).

<sup>5</sup> See *In re: Complaint of Ben Lomand Communications, Inc. Against Citizens Communications Company of Tennessee LLC d/b/a Frontier Communications of Tennessee*, Docket No. 02-01221, *Complaint*, pp. 3-7 (November 12, 2002).

<sup>6</sup> See *In re: Complaint of Ben Lomand Communications, Inc. Against Citizens Communications Company of Tennessee*, Docket No. 02-01221, *Order Granting Motion of Ben Lomand Communications, Inc. for Approval of Withdrawal of Complaint and Dismissal with Prejudice* (June 2, 2004).

<sup>7</sup> Transcript of Authority Conference, pp. 32-33 (September 27, 2004). See also *Order Reactivating Docket, Convening a Contested Case, Granting Intervention, Denying Motion to Dismiss, Denying Motion for Leave to File Reply and Appointing a Hearing Officer* (April 14, 2005).

The Hearing Officer scheduled November 17, 2004 as the due date for discovery requests, with responses and objections to discovery due by December 8, 2004. At a status conference on March 24, 2005, the parties agreed to waive cross-examination of witnesses and to proceed with briefs to be filed on May 6, 2005. The reply briefs were filed on May 27, 2005. On April 4, 2005, the parties filed a *Joint Motion Regarding Testimony at the Hearing*, requesting that live testimony be waived and that the pre-filed testimony and the discovery in the docket be made part of the record. In an order dated April 13, 2005, the Hearing Officer granted these requests. Oral argument was heard by the panel on August 8, 2005.

Citizens took the position that because of market conditions predatory pricing was impossible because it faces stiff competition from Ben Lomand CLEC.<sup>8</sup> Citizens noted that each time it loses a landline customer it loses the opportunity to sell additional discretionary services like vertical calling features or Digital Subscriber Line.<sup>9</sup> The company claimed that Ben Lomand's allegations are speculative.<sup>10</sup> Ben Lomand argued that Citizens had failed to make the requisite showing that exemption from the price floor was in the public interest.<sup>11</sup> Ben Lomand also contended that price floor relief would lead to anticompetitive behavior and require subsidization – which would either drive Ben Lomand from the market or, contrary to the public interest, service quality and investment would be reduced.<sup>12</sup>

#### **SEPTEMBER 12, 2005 AUTHORITY CONFERENCE**

During the Authority Conference on September 12, 2005, the panel deliberated Citizens' Petition and discussed whether Citizens should be exempt from the price floor requirement contained in Tenn. Code Ann. § 65-5-108(c). The panel found that a public interest exception to the price floor requirement is provided under Tennessee law. In this case, eliminating the price floor could lower prices, increase competition, and provide more choice – which would benefit Tennessee consumers

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<sup>8</sup> Brief of Citizens Telecommunications Company of Tennessee, p. 1 (May 6, 2005).

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 4.

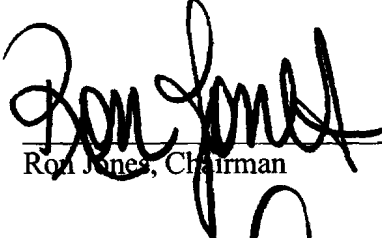
<sup>11</sup> Brief of Ben Lomand Communications, Inc. p. 3 (May 6, 2005).

<sup>12</sup> *Id.* at 5.

and promote the public interest. The panel further found no evidence in the record that Citizens has market power in either McMinnville or Sparta and concluded that the chances of a Citizens' monopoly in those markets was unlikely. Citizens had agreed that it would file appropriate tariffs with the TRA if the *Petition for Exemption* was granted. The panel unanimously voted to grant the exemption. Director Miller concurred in this result, but did not concur with the entire rationale of the decision.

**IT IS THEREFORE ORDERED THAT:**

Citizens' *Petition for Exemption* pursuant to Tenn. Code Ann. 65-5-108 (2004) is granted.

  
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Ron Jones, Chairman

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Deborah Taylor Tate, Director<sup>13</sup>

  
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Pat Miller, Director

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<sup>13</sup> Director Tate voted in agreement with the other directors but resigned her position as director before the issuance of this order.