

NASHVILLE, TENNESSEE

IN RE:

DOCKET NO.
06-00074

The *Joint Petition* in the instant docket involves the approval of an interconnection agreement between a competing local exchange carrier (“CLEC”), Comcast, and a wireless carrier, Verizon. By definition, wireless carriers, such as Verizon, are not public utilities in

Tennessee.¹ In support of the *Joint Petition*, Comcast and Verizon cite Tenn. Code Ann. § 65-5-104 and, “to the extent applicable, Section 252(e) of the Communications Act of 1934, as amended.”² In a footnote, they explain that:

While it is not clear that Section 252 applies to interconnection agreements such as the one between the Parties, out of an abundance of caution, and without waiving any right to assert that the agreement is not subject to the jurisdiction of the [Authority], the Parties submit their Interconnection Agreement for [Authority] review.³

Given the filing of the *Joint Petition* requesting review and approval of the agreement and my past decision on a similar petition filed “out of an abundance of caution,”⁴ I determined that the appropriate action in this instance and at this time was to consider the *Joint Petition*. Having done so, I voted on June 12, 2006, along with my fellow Directors to grant the *Joint Petition*. The order signed by my fellow panel-members accurately reflects this decision.

Since the panel ruled in this docket, the Authority rendered two decisions that deserve comment here. As a result of the filing of letters by a CLEC, Charter Fiberlink – Tennessee, LLC (“Charter”), the Authority opened Docket Nos. 06-00266 and 06-00273. In the letters, Charter explained that it was providing the Authority with two traffic exchange agreements executed by Charter and two non-Tennessee certificated Georgia rural incumbent local exchange carriers for informational purposes or, in the alternative, for approval. The facts of Docket Nos. 06-00266 and 06-00273 are similar to the instant docket in that the agreements in the two more recent dockets are also between a CLEC and providers that do not fall within the Tennessee statutory definition of public utility.

¹ See Tenn. Code Ann. § 65-4-101(6) (2004).

² *Joint Petition*, 1 (Mar. 17, 2006).

³ *Id.* at n.1.

⁴ See *In re: Petition for Approval of the Wireless Interconnection Agreement between Ben Lomand Telephone Cooperative, Inc. and Nextel South Corporation*, Docket No. 05-00324, Letter Dated January 6, 2006, p. 1 (filed Jan. 6, 2006).

After careful consideration of Charter's letters, the attached agreements, and the relevant statutory and regulatory authority, I concluded differently from my decision in this docket. The panels heard Docket Nos. 06-00266 and 06-00273 during the December 4, 2006 Authority Conference. In Docket No. 06-00266, I offered the following motion, which prevailed:

I find that although the Authority has jurisdiction over Charter Fiberlink-Tennessee, Inc., and thereby the interconnection agreement executed by Charter, I have also found that neither state law nor federal law require approval of the agreement.

Therefore, at this time it is appropriate to merely acknowledge receipt of the agreement and accept it for informational purposes.⁵

In Docket No. 06-00273, a fellow panel-member moved to accept the agreement for informational purposes. When voting in favor of the motion, I made comments similar to those in my motion in Docket No. 06-00266.⁶

It was my intention in making my motion and comments on December 4, 2006, to recognize that, although the Authority has jurisdiction over interconnection agreements involving CLECs, currently neither state nor federal law require interconnection agreements between CLECs and non-incumbent carriers or carriers that are not defined as public utilities be filed for approval by the Authority. In the event that such agreements are filed at this agency, I will review them with this determination in mind.⁷

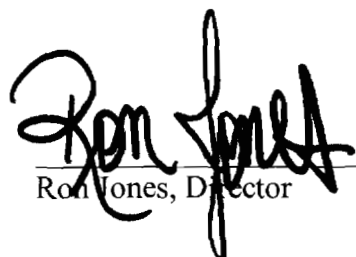
In conclusion, I concur with the *Order Approving the Interconnection and Reciprocal Compensation Agreement* filed by my fellow Directors in this docket and offer these additional comments to aid the understanding of my position with regard to how the Authority as of the

⁵ Transcript of December 4, 2006 Authority Conference, p. 31 (Deliberations in Docket No. 06-00266).

⁶ *Id.* at 43-44 (Deliberations in Docket No. 06-00273).

⁷ In no event should this Concurring Opinion be construed as prejudging the comments filed in Docket No. 05-00327 on September 15, 2006. See *In re: Generic Docket to Develop Policy for the Submission and Review of CLEC-to-CLEC Interconnection Agreements*, Docket No. 05-00327.

date of this Concurring Opinion should treat interconnection agreements between CLECs and non-incumbent carriers or carriers that are not defined as public utilities.



Ron Jones, Director