

3 Pursuant to Tenn. Code Ann. § 65-4-125:

(a) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall designate or change the provider of telecommunications services to a subscriber if the provider or person acting on behalf of the provider knows or reasonably should know that such provider knows or reasonably should know that such provider or person does not have the authorization of such subscriber.

(b) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that

208(c)⁴, Tenn. Code Ann. § 65-4-202⁵, Tenn. Code Ann. § 65-29-102⁶, and 47 U.S.C. 258⁷. Ben Lomand alleges that Frontier wrongfully “highjacked a customer” (as the term is used in the industry) of Ben Lomand by providing service to a Ben Lomand customer when such customer did not request such service from Frontier, but did request such service from Ben Lomand. Such action is harmful to Ben Lomand.

In support of these claims and the relief sought, Ben Lomand states as follows:

I. INTRODUCTION

1. Ben Lomand is a telephone cooperative as defined in Tenn. Code Ann. § 65-29-102 and serves customers in the Tennessee counties of White, Warren, Van Buren, Grundy, and portions of Franklin, Coffee, and Bedford. Ben Lomand’s principal offices are located at 311 N. Chancery Street, McMinnville, Tennessee 37111-0670.

2. Frontier is a telecommunications utility regulated by the Tennessee Regulatory Authority (“TRA”) pursuant to Tenn. Code Ann. §§ 65-4-101 and 65-4-104. Its usual address for service is 300 Bland Street, Bluefield, West Virginia 24701.

specified in the tariff or contract governing the charges for such services. . . .

[and]

(e) The Tennessee regulatory authority may . . . decide and issue orders . . . to enforce the provisions of this section. . . .

⁴ Pursuant to Tenn. Code Ann. §65-5-208(c), the TRA “shall, as appropriate . . . adopt other rules or issue orders to prohibit . . . anti-competitive practices.”

⁵ Tenn. Code Ann. § 65-4-202 provides that “[i]f any public utility . . . shall interfere . . . with the existing . . . system of any other public utility, the authority, on complaint of the public utility claiming to be injuriously affected, may . . . make such order and prescribe such terms and conditions in harmony with this part as are just and reasonable.”

⁶ Tenn. Code Ann. § 65-29-102 provides that in the territory of a rural telephone cooperative, “. . . there shall be no duplication of service where reasonably adequate service is available.”

⁷ Pursuant to 47 U.S.C. 258, “[n]o telecommunications carrier shall submit or execute a change in a subscriber selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the [authority] shall prescribe. Nothing in this section shall preclude any State [authority] from enforcing such procedures with respect to intrastate services.”

II. JURISDICTION

3. The TRA has jurisdiction to consider the instant complaint pursuant to Tenn. Code Ann. §§ 65-4-1-4, 65-4-117(1), 65-4-125, 65-4-202, and 65-5-208(c) which give the TRA both the power and duty to enforce the 1995 Tennessee Telecommunications Act and “other laws . . . over which they have jurisdiction”; investigate and hold hearings regarding a complaint; and “original jurisdiction . . . to resolve all contested issues of fact or law.” In addition, Tenn. Code Ann. § 65-29-130(a)(2) confers jurisdiction upon the TRA for “[t]he hearing and determining of disputes arising . . . between telephone cooperatives and any other type of . . . corporation . . . rendering telephone service, relative to and concerning territorial disputes . . .” Furthermore, Sections 251 and 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, confers jurisdiction upon the TRA to enforce laws for the unlawful change of subscribers.

III. ARGUMENT

4. Tenn. Code Ann. § 65-4-125 prohibits a telecommunications service provider from changing the provider of such services to a subscriber if the provider knows or should have known that the provider does not have the subscriber’s authorization.

5. Tenn. Code Ann. § 65-4-202 prohibits a public utility regulated by the TRA from interfering with any route, line, plant, or system of another public utility.

6. Pursuant to Tenn. Code Ann. § 65-21-110, it is unlawful for any persons to “damage or obstruct . . . any telephone poles, wires, fixtures or other apparatus or appliances, or to impede or impair the service of any telephone line . . .”

7. Under the provisions of Tenn. Code Ann. § 65-4-120, any public utility that violates or fails to comply with any rule “shall in the discretion of the authority be subject to a penalty or fifty dollars (\$50.00) for each day of any such violation. . .”

8. 47 U.S.C. 258(a) prohibits a telecommunications carrier from changing a subscriber’s service provider without proper procedure. Such code section allows the TRA to enforce such procedures with respect to intrastate services.

9. Ben Lomand provides telecommunications services to Riverpark Hospital (“Riverpark”) in McMinnville, Tennessee. Such service has been provided since the hospital was constructed. Ben Lomand has supplied Riverpark with, among other services, local service, dial tone, inside wiring, T-1 service, and has located a fiber terminal inside the building to provide high quality data services. Noteworthy is that NPA-NXX (931-815) is assigned to Ben Lomand by the North American Numbering Plan Administration (NANPA) and 931-815 is the NPA-NXX assigned to Riverpark.

10. Ben Lomand and Frontier have both determined that Riverpark is in Ben Lomand’s territory and is a Ben Lomand customer.

11. The Interexchange Carrier for Riverpark is AT&T, Inc. (“AT&T”). AT&T placed an order for an additional T-1 in Riverpark . The Access Service Request (“ASR”) for such order, dated February 26, 2007 with a due date of March 7, 2007, named Ben Lomand as the local provider; the carrier code clearly delineated Ben Lomand as the local provider.

12. Frontier, in processing the ASR from its end, arbitrarily proceeded to lock Ben Lomand out of the circuit.

7. Under the provisions of Tenn. Code Ann. § 65-4-120, any public utility that violates or fails to comply with any rule “shall in the discretion of the authority be subject to a penalty or fifty dollars (\$50.00) for each day of any such violation. . .”

8. 47 U.S.C. 258(a) prohibits a telecommunications carrier from changing a subscriber’s service provider without proper procedure. Such code section allows the TRA to enforce such procedures with respect to intrastate services.

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13. An additional order for Ben Lomand service involved an Internet circuit with a processing date of December 26, 2006 for a dedicated Internet circuit. Frontier also installed such service as its own.

14. When Ben Lomand contacted Frontier, Frontier stated that its salesman determined that a small portion of Riverpark is in Frontier territory (It should be noted that split buildings are not allowed under the law). After some discussion, Frontier agreed to re-instate the first circuit discussed but, since this initial agreement, Frontier has reversed itself and determined it will keep both circuits as its own.

15. In violation of the Tennessee Code Annotated Sections and federal law cited supra, and the prohibition against split buildings, Frontier, upon receiving the customer order for work on its end, by-passed Ben Lomand and provided the service ordered as if to its own customer. Frontier retains these circuits as its own. Such conduct is referred to in the telecommunications industry as “hijacking the customer.”

16. Frontier has refused to discuss this matter with Ben Lomand.

17. The conduct of Frontier cited above is in violation of the above-referenced statutes, including Tenn. Code Ann. § 65-29-130(a) regarding territorial disputes.

18. If Frontier is allowed to continue to “hijack the customer” of Ben Lomand, Frontier will be unjustly enriched at the expense of Ben Lomand and unfairly competing with Ben Lomand in violation of the above-referenced statutes.

19. To the extent the TRA does not have jurisdiction, or has concurrent jurisdiction, to impose fines as set forth in Tenn. Code Ann. § 65-4-112(d) and other sections and grant other relief, Ben Lomand reserves its right to bring action before any court, agency, board, or commission having jurisdiction.

REQUEST FOR RELIEF

Based upon these allegations, Ben Lomand requests that the TRA:

1. Open an investigation concerning the actions cited in this Complaint;
2. Convene a contested case concerning these actions;
3. Terminate such action as in violation of state law;
4. Restore the “hijacked” service to Ben Lomand;
5. Impose sanctions for any violation of state law, including, but not limited to, fines of \$50.00/day/violation since the inception of the unlawful act of Frontier;
6. Award Ben Lomand damages as a result of Frontier’s actions; and
7. Grant such other and further relief to which it may be entitled, including reasonable attorney’s fees and costs.

Respectfully submitted,




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Certificate of Service

The undersigned hereby certifies that on this the 23rd day of March, 2007, a true and correct copy of the foregoing has been forwarded via first class U. S. Mail, hand delivery, or overnight delivery to the following.

J. Michael Swatts
State Government Affairs Director
Citizens Communications
P. O. Box 770
Bluefield, WV 24701-0770



H. LaDon Baltimore