

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 6, 2007

IN RE:

**PETITION OF FRONTIER COMMUNICATIONS OF
AMERICA, INC. TO AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY**

**DOCKET NO.
07-00155**

**ORDER GRANTING PETITIONS TO INTERVENE,
SETTING DEADLINE FOR RECEIPT OF PROPOSED PROCEDURAL SCHEDULE,
AND ADDRESSING OTHER PRELIMINARY MATTERS**

This matter is before the Hearing Officer upon the filings of the parties to consider petitions to intervene, a motion to hold the case in abeyance pending resolution of an action pending at the Federal Communications Commission ("FCC"), and to establish a procedural schedule.

BACKGROUND

On June 20, 2007, Frontier Communications of America, Inc. ("Frontier") filed its *Petition of Frontier Communications of America, Inc to Amend Its Certificate of Convenience and Necessity* ("*Petition*") requesting amendment to its existing authority "to provide telecommunications service . . . in areas served by telephone cooperatives, including territory served by Ben Lomand Rural Telephone Cooperative, Inc. ("Ben Lomand")."¹

At a regularly scheduled Authority Conference held on July 9, 2007, the voting panel of the Tennessee Regulatory Authority ("Authority" or "TRA") assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint General Counsel or his

¹ *Petition*, p. 1 (June 20, 2007).

designee as Hearing Officer for the purpose of hearing preliminary matters, setting a procedural schedule to completion and preparing this matter for hearing before the panel. On July 11, 2007, Ben Lomand filed its *Petition to Intervene* pursuant to Tenn. Code Ann. §4-5-310.

On November 20, 2007, the Hearing Officer issued a *Notice of Status Conference*. The notice provided that any party desiring to participate in this proceeding should file a petition to intervene not later than November 30, 2007, and that petitions to intervene filed by that date would be considered at the status conference on December 5, 2007. The notice also stated that the establishment of a procedural schedule and any other pre-hearing issues would be matters for discussion during the status conference.

On November 29, 2007, the Authority received petitions for leave to intervene from the following interested parties: Highland Telephone Cooperative, Inc. (“Highland”), Bledsoe Telephone Cooperative Corporation, Inc. (“Bledsoe”), West Kentucky Rural Telephone Cooperative Corporation, Inc. (“West Kentucky”), DTC Communications (“DTC”), North Central Telephone Cooperative, Inc. (“North Central”), and Twin Lakes Telephone Cooperative Corporation (“Twin Lakes”) (collectively, the “Intervening Cooperatives”). On December 3, 2007, the Intervening Cooperatives filed their *Motion to Hold Case in Abeyance*. On December 5, 2007, Frontier filed its *Response in Opposition to the Motion to Hold Case in Abeyance Filed by the Intervenor*s.

STATUS CONFERENCE

The Status Conference was convened at approximately 10:00 a.m. on December 5, 2007.

In attendance at the Status Conference were the following parties, represented by counsel:

Frontier Communications of America – **Guilford F. Thornton, Jr., Esq.**, and **Charles W. Cook III, Esq.**, Adams and Reese LLP, 424 Church Street, Suite 200, Nashville, TN 37219;

Ben Lomand Rural Telephone Cooperative – **H. LaDon Baltimore, Esq.**, Farrar & Bates LLP, 211 Seventh Avenue North, Suite 420, Nashville, TN 37219; and

Intervening Cooperatives – **Melvin J. Malone, Esq.**, Miller and Martin PLLC, 1200 One Nashville Place, 150 Fourth Avenue North, Nashville, TN 37219.

Petitions to Intervene

Ben Lomand, Highland, Bledsoe, West Kentucky, DTC, North Central, and Twin Lakes each filed with the Authority a petition to intervene pursuant to Tenn. Code Ann. §4-5-310. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.²

Under Tenn. Comp. R. & Regs. 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion.

No person or party has filed an objection to any of the petitions to intervene filed in this docket to date. During the Status Conference, Frontier stated that it had no objection to the granting of any of the above noted petitions to intervene filed in the docket. Thereafter, the Hearing Officer found that each petition contained allegations in conformance with the standard set forth in the aforementioned statute. Specifically, that the petitions are timely, the legal rights and interests of Ben Lomand and the Intervening Cooperatives may be determined in this

² Tenn. Code Ann. § 4-5-310(a) (1998).

proceeding, and that the interventions will not impair the orderly and prompt conduct of these proceedings. Accordingly, the Hearing Officer granted the above-noted petitions to intervene in accordance with Tenn. Code Ann. §§4-5-310(a) and 65-2-107, and Tenn. Comp. R. & Regs. 1220-1-2-.08.

Intervening Cooperatives' Motion to Hold Case in Abeyance

On December 3, 2007, the Intervening Cooperatives filed their *Motion to Hold Case in Abeyance* requesting that this docket be held in abeyance pending resolution of *In Re: Petition of Frontier Communications of America, Inc. for Preemption and Declaratory Ruling*, FCC WC Docket No. 06-6. Under TRA rules, a response in opposition to the motion was not required to be filed until seven days following receipt of service, approximately on December 10, 2007. During the Status Conference, Frontier stated that it anticipated filing its response by end of business December 6, 2007.³ Further, the parties requested oral argument on the motion, and agreed that, in lieu of a reply to the response by the Intervening Cooperatives, the parties would proceed with such argument without delay or need for rescheduling. Following a brief recess, all parties presented oral argument concerning the merits of the *Motion to Hold Case in Abeyance* during the Status Conference on December 5, 2007. The Hearing Officer took the matter under advisement, and will issue a separate order rendering a decision on the motion.

Procedural Schedule

In voting to convene a contested case proceeding, the panel assigned to this docket instructed the Hearing Officer to establish a procedural schedule to completion in preparation of a hearing on the merits. During the Status Conference, the parties agreed that a procedural timeline for resolution of the docket is dependent upon the outcome of the *Motion to Hold Case*

³ During the Status Conference, as a courtesy, Frontier provided the parties and the Hearing Officer with an advance copy of its anticipated responsive pleading setting forth the substance of its arguments in opposition to the motion.

in Abeyance. Therefore, as agreed to by the parties, the Hearing Officer orders that the parties submit an *Agreed Proposed Procedural Schedule* not later than seven days following issuance of the Hearing Officer's Order pertaining to the *Motion to Hold Case in Abeyance*, if necessary.

IT IS THEREFORE ORDERED THAT:

1. Ben Lomand Rural Telephone Cooperative, Inc. is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

2. Highland Telephone Cooperative, Inc. is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

3. Bledsoe Telephone Cooperative Corporation, Inc. is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

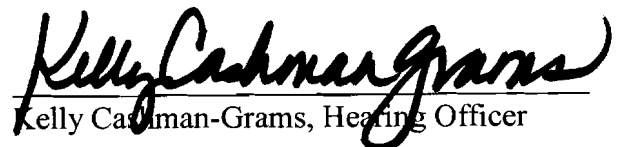
4. West Kentucky Rural Telephone Cooperative Corporation, Inc. is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

5. DTC Communications is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

6. North Central Telephone Cooperative, Inc. is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

7. Twin Lakes Telephone Cooperative Corporation is hereby granted leave to intervene and receive copies of any notices, orders or other documents submitted herein.

8. As appropriate, within seven days following the separate issuance of an order by the Hearing Officer on the *Motion to Hold Case in Abeyance*, the parties shall file an *Agreed Proposed Procedural Schedule* setting forth a timeline for completion of the docket to a hearing on the merits.


Kelly Cashman-Grams, Hearing Officer