

11-00161

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September 14, 2011

## **VIA HAND DELIVERY**

Chairman Eddie Roberson  
c/o Sharla Dillon  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

**Re: Joint Application for Expedited Approval of Transfer of Control  
between Twin Lakes Telephone Cooperative Corporation and  
OnWav, Inc.**

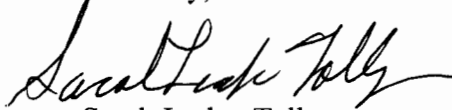
Dear Chairman Roberson:

Enclosed please find the original and 13 copies of a Joint Application for Expedited Approval of Transfer of Control between Twin Lakes Telephone Cooperative Corporation and OnWav, Inc. for filing and approval by the Tennessee Regulatory Authority. Also enclosed is an additional copy, which I would appreciate you stamping as "filed," and returning to me by way of our courier. Finally, checks in the amount of \$50.00 made payable to the Tennessee Regulatory Authority are enclosed to cover the filing fee in this matter.

Please note that the Verification pages are not original signatures but we will file the original Verification pages as soon as we receive them.

Should you have any questions with respect to this filing, please do not hesitate to contact me at the telephone number listed above.

Sincerely,



Sarah Lodge Tally

SLT/mh

Enclosures [checks, 14 copies of Agreement]

cc: Ms. Ellen Forkum (via email)

**BEFORE THE**  
**TENNESSEE REGULATORY AUTHORITY**

<b>In Re:</b>	)	
	)	
<b>Joint Application of</b>	)	<b>Docket No.</b> <u>11-00161</u>
<b>Twin Lakes Telephone Cooperative</b>	)	
<b>Corporation</b>	)	
	)	
<b>and</b>	)	
	)	
<b>OnWav, Inc.</b>	)	
	)	
<b>For Approval of Transfer of Control</b>	)	

**JOINT APPLICATION FOR EXPEDITED**  
**APPROVAL OF TRANSFER OF CONTROL**

Twin Lakes Telephone Cooperative Corporation and OnWav, Inc. (hereinafter collectively referred to as, the "Applicants" and individually referred to as "TL Cooperative" and "OnWav," respectively) have entered into a stock purchase agreement under which TL Cooperative will purchase 100% of the stock of OnWav. OnWav will remain the certificated provider. The Applicants, through their undersigned counsel, hereby submit this Joint Application For Expedited Approval of Transfer of Control (the "Application") for approval by the Tennessee Regulatory Authority ("TRA" or "Authority") of the purchase of OnWav by TL Cooperative ("the Transaction").<sup>1</sup> To facilitate the timely closing of the Transaction, the Applicants are requesting expedited consideration of this Application.

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<sup>1</sup> The Applicants do not believe that TRA approval of this transaction is required, pursuant to Tenn. Code Ann. § 65-4-112(b), but are submitting this application under Tenn. Code Ann. § 65-4-113 out of an abundance of caution.

The grant of this Application will serve the public interest and is in full compliance with applicable law. The consummation of the Transaction will increase access to broadband internet service and improve the financial position of the Applicants. OnWav will continue to provide quality services and meaningful choices to current and potential customers.

## I.

### THE APPLICANTS

A. **Twin Lakes Telephone Cooperative Corporation.** Twin Lakes Telephone Cooperative Corporation is a telephone cooperative that was incorporated in Tennessee in 1951 and has its principal office in Gainesboro, Tennessee. TL Cooperative currently provides a full array of telecommunications and broadband services within approximately eight (8) Tennessee counties, servicing fifteen (15) exchanges. Throughout its history, TL Cooperative has provided its customers with state of the art technology in the telecommunications arena and quality customer service.

B. **OnWav, Inc.** OnWav is a privately held corporation that was incorporated in Tennessee on February 23, 2007, and that has its principal place of business in Cookeville, Tennessee. The TRA granted OnWav a Certificate of Convenience and Necessity to Provide Competing Local Exchange Services on June 12, 2008.<sup>2</sup> OnWav provides a broad variety of local exchange services, including basic line access, Private Branch Exchange ("PBX") and Direct Inward Dialing ("DID"), E911 and 911 emergency, Long Distance and International calling, and Internet access, to both commercial and residential customers in Cookeville,

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<sup>2</sup> The Order Granting Certificate of Public Convenience and Necessity, Docket No. 08-00046, *In Re: Application of OnWav, Inc. for a CCN to Operate as a Competing Local Exchange Carrier in Tennessee* is attached as **Exhibit A**.

Tennessee, and was recently awarded a National Telecommunications Information Administration Broadband Technology Opportunities Program grant.

## II.

### **DESIGNATED CONTACTS**

The names, addresses, and telephone and fax numbers of designated contacts in connection with this matter are:

Melvin J. Malone  
Sarah Lodge Tally  
Miller & Martin PLLC  
1200 One Nashville Place  
150 Fourth Avenue, North  
Nashville, Tennessee 37219  
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#### *Attorneys for the Applicants*

Jonathan West, General Manager & CEO  
Twin Lakes Telephone Cooperative Corporation  
200 Telephone Lane  
Gainesboro, TN 38562  
(931) 268-2151 (telephone)  
(931) 268-3702 (facsimile)  
[jwest@twlakes.coop](mailto:jwest@twlakes.coop)

Michael Powell, President & CEO  
OnWav, Inc.  
4100 Plantation Drive  
Cookeville, TN 38506  
(888) 876-6928 (telephone)  
(866) 875-2264 (facsimile)  
[mpowell@onwav.com](mailto:mpowell@onwav.com)

*Company Representatives*

### III.

#### **DESCRIPTION OF THE TRANSACTION**

On July 29, 2011, TL Cooperative and OnWav entered into a stock purchase agreement under which TL Cooperative will purchase all shares of OnWav.<sup>3</sup> The sale will not affect the operating authority of OnWav. OnWav will continue to offer service with no immediate change in its rates, terms, or conditions of service to its customers.

Because of this transaction and grant funds provided by the U.S. Department of Commerce, OnWav will be able expand its wireless broadband offering to six additional towns outside its existing service area of Cookeville, Tennessee. These additional towns are all within the TL Cooperative service area and include Gainesboro, Celina, Livingston, Byrdstown, Jamestown, and Allardt. Residential and commercial customers will have access to the latest 4G mobile broadband service. This technology investment will allow anchor institutions, such as hospitals, schools, and government offices, to have a redundant link to the internet and will provide additional connectivity for the communities served, thereby enhancing their ability to attract industry and to connect to the global marketplace.

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<sup>3</sup> The **CONFIDENTIAL AND PROPRIETARY** Stock Purchase Agreement is attached as **Exhibit B**. The Stock Purchase Agreement is filed under seal.

#### IV.

##### **MANAGERIAL, TECHNICAL AND FINANCIAL CAPABILITY**

Following the consummation of the Transaction, OnWav will have the requisite managerial, technical, and financial capabilities to continue to operate its business as currently conducted and provide the same, if not an improved, level of service and options to its current customers. When the Authority granted OnWav a Certificate of Convenience and Necessity to Provide Competing Local Exchange Services on June 12, 2008, it determined that OnWav possessed the managerial, technical, and financial capabilities to provide local exchange service. Since that time, OnWav's management team has only gained experience and continues to satisfy the Authority's requirements. Additionally, OnWav has been the recipient of a \$6.5 million National Telecommunications Information Administration Broadband Technology Opportunities Program award. The award consists of \$5.2 million dollars in grant funds and \$1.3 Million in matching funds, which will provide the needed funding for the expansion of broadband Internet service in the service area.

For all reasons stated herein, OnWav has the requisite managerial, technical, and financial capabilities to continue to provide telecommunications services.

#### V.

##### **APPROVAL IS IN THE PUBLIC INTEREST**

The Authority's approval of this Application serves the public interest. The Transaction is being undertaken in furtherance of the business plans of TL Cooperative and OnWav and will result in increased broadband Internet access for consumers and an

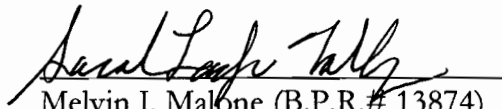
improved financial position for the Applicants. The Transaction will not interrupt service for the customers of OnWav.

The Applicants are requesting expedited consideration of this Application to facilitate the timely closing of this transaction.

**WHEREFORE**, the Applicants respectfully request the Authority to issue an order approving this Application and the Transaction.

Respectfully submitted Sept. 14, 2011.

**Miller & Martin PLLC**



Melvin J. Malone (B.P.R.# 13874)  
Sarah Lodge Tally (B.P.R.#27385)  
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1200 One Nashville Place  
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*Attorneys for Applicants*

**EXHIBIT A**

*Order Granting Certificate of Public Convenience and Necessity, Docket No. 08-00046, In Re:  
Application of OnWav, Inc. for a CCN to Operate as a Competing Local Exchange Carrier in Tennessee.*

(attached)



**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 3, 2008**

**IN RE:**

**APPLICATION OF ONWAV, INC. FOR A CCN TO  
OPERATE AS A COMPETING LOCAL EXCHANGE  
CARRIER IN TENNESSEE**

)  
)  
)  
)  
)

**DOCKET NO.  
08-00046**

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**INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on June 12, 2008, to consider the *Application for Certificate to Provide Competing Local Telecommunications Services* (the "*Application*") filed by OnWav, Inc. ("OnWav") on March 31, 2008. In its *Application*, OnWav seeks a Certificate of Public Convenience and Necessity ("CCN") for authority to provide competing local telecommunications services, including facilities-based and resold local exchange, exchange access and interexchange telecommunications services within the State of Tennessee.

**Legal Standard for Granting Certificate of Public Convenience and Necessity**

OnWav's *Application* was made pursuant to and considered in light of the criteria for granting a CCN as set forth in Tenn. Code Ann. § 65-4-201 (Supp. 2006), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and

necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

\* \* \*

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

#### **The June 12, 2008 Hearing**

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on May 20, 2008. No persons sought intervention prior to or during the Hearing. At the Hearing held on June 12, 2008, Mr. Michael Powell, President and CEO of OnWav, participated in the Hearing, adopted his pre-filed testimony and was subject to examination by the Hearing Officer. During the Hearing, Mr. Powell stated that OnWav services will be non facilities and facilities based. The facilities based portion will be effected

via WiMax technology, which has the ability to wirelessly transmit a call up to the last 30 miles. OnWav initially intends to deploy a network in Cookeville and later span out throughout the State, including rural areas. Mr. Powell affirmed that OnWav will comply with all of Tennessee's public interest obligations and responsibilities as mandated in TRA Rule 1220-4-8-.04(3)(b) and (c). Upon the conclusion of the presentation of proof, the Hearing Officer granted OnWav's *Application* based upon the following findings of fact and conclusions of law:

**I. OnWav's Qualifications**

1. OnWav is a corporation organized under the laws of the State of Tennessee and was licensed to transact business in Tennessee by the Secretary of State on February 23, 2007.

2. The complete street address of the registered agent for OnWav, Mr. Michael Powell, is 1609 Fairway Drive, Cookeville, Tennessee 38501. The complete street address of the corporate office of OnWav is 1609 Fairway Drive, Cookeville, Tennessee 38501. The telephone number is (931) 544-7224.

3. The *Application* and supporting documentary information existing in the record indicate that OnWav has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, OnWav's senior management team possesses the requisite business, technical, operational and regulatory telecommunications experience.

4. OnWav has the necessary capital and financial ability to provide the services it proposes to offer.

5. OnWav has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

## **II. Proposed Services**

OnWav intends to offer a broad range of services through the utilization of its own facilities, resold facilities, and a combination of these provisioning methods. OnWav plans to offer basic access line service, Private Branch Exchange ("PBX") and Direct Inward Dialing ("DID") Services, E911 and 911 emergency services, Long Distance and International Calling, Internet Access, Optional Calling Features, Directory Assistance, Directory Services, as well as all services required by TRA Rule 1220-4-8-.04. OnWav expects to serve both business and residential customers, with the residential customers becoming a higher priority over time as OnWav reaches out to the most rural and deprived areas of the counties. OnWav's initial line of local services will be comparable to that currently offered by the Incumbent Local Exchange Carriers ("ILECs").

OnWav will have a limited license Class 5 Softswitch and will rely on the underlying carrier's facilities for customer provisioning, routing and switching. Additionally, OnWav does not require customers to provide any special Customer Provided Equipment ("CPE") for delivery of service. All OnWav equipment will be compatible with that of the ILECs. OnWav will deliver service to their customer's premises in two ways: by using the current local loop of the ILECs, Unbundled Network Elements ("UNEs"), UNE-Platform ("UNE-P") and UNE-Loop ("UNE-L"), and by using OnWav's wireless network as a last mile connection or in place of the current wired loop which interconnects through OnWav's Class 5 Softswitch with ILEC.

OnWav will lease local loops from the ILECs, route signals through its Class 5 Softswitch interconnected with the ILEC for access to the Public Switched Telephone Network ("PSTN"), and serve customers outside its citywide wireless network through the reselling of the ILEC's UNEs. OnWav will serve customers inside its secure citywide wireless network by using

its WiMax Quality of Service (“QoS”) wireless network as the local loop to customer premises. These voice/data signals will travel from customer premises and back via special CPE, provided by OnWav, to its central office and into a Cisco 2801 Router. The Router will send the voice signal to the Class 5 Softswitch interconnected to the ILEC and on to the PSTN and send the data signals to the Internet link. Further, OnWav intends to use its WiMax wireless network as a last mile or local loop connection to provide service to customers whose physical locations are within its network’s reach capabilities. The customer’s voice/data signal will travel wirelessly back and forth through the secure OnWav Wireless Network and directly into and out of the Cisco 2801 Router and Class 5 Softswitch, which routes signals the interconnection to the ILEC and to the PSTN or Internet.<sup>1</sup>

OnWav provided documentation indicating that it served notice of its application to provide competing local telecommunications services to all eighteen Incumbent Local Exchange Carriers in Tennessee.

### **III. Permitting Competition to Serve the Public Convenience and Necessity**

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of OnWav’s *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

### **IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program**

OnWav has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority’s Rules.

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<sup>1</sup> See *Data Response*, p. 2 (May 5, 2008).

**IT IS THEREFORE ORDERED THAT:**

1. The *Application for Certificate to Provide Competing Local Telecommunications Services* filed by OnWav, Inc. is approved;
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen days from the date of this Order.
3. This Initial Order shall become a Final Order of the Tennessee Regulatory Authority, if no petition for reconsideration or appeal of this Order is filed prior to the expiration of the fifteen day appeal period.

  
Kelly Cashman-Grams, Hearing Officer

**EXHIBIT B**

**CONFIDENTIAL AND PROPRIETARY INFORMATION**

Stock Purchase Agreement by and among Twin Lakes Telephone Cooperative Corporation,  
OnWay, Inc., and the Shareholders List on the Signature Page Hereto

**FILED UNDER SEAL AS CONFIDENTIAL AND PROPRIETARY  
INFORMATION**

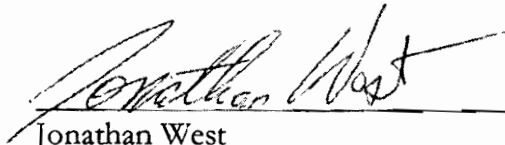
(attached)

VERIFICATION

STATE OF TENNESSEE )  
COUNTY OF Jackson )

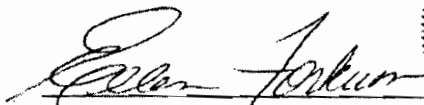
I, Jonathan West, being duly sworn, depose and state as follows:

1. I am the General Manager & CEO of Twin Lakes Telephone Cooperative Corporation.
2. I have reviewed the foregoing Application and the documents filed therewith, and the contents thereof are true and correct to the best of my knowledge, information and belief.



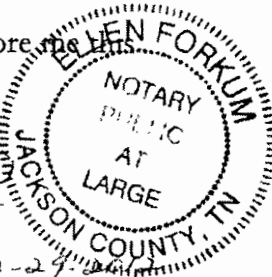
Jonathan West  
General Manager & CEO  
Twin Lakes Telephone Cooperative Corporation

Sworn to and subscribed before me this  
12<sup>th</sup> day of September, 2011.



Notary Public

My Commission Expires: 02-27-2012





VERIFICATION

STATE OF TENNESSEE )  
COUNTY OF Overton )

I, Michael Powell, being duly sworn, depose and state as follows:

1. I am the President & CEO of OnWav, Inc.
2. I have reviewed the foregoing Application and the documents filed therewith, and the contents thereof are true and correct to the best of my knowledge, information and belief.



A handwritten signature of Michael Powell in black ink.

\_\_\_\_\_  
Michael Powell  
President & CEO  
OnWav, Inc.

Sworn to and subscribed before me this  
12th day of Sept, 2011.

A handwritten signature of Angela Faith Maynard in black ink.  
\_\_\_\_\_  
Notary Public  
My Commission Expires: 09-17-13