

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

February 7, 2019

IN RE:

PETITION OF BEN LOMAND COMMUNICATIONS,
LLC TO BE DESIGNATED AN ELIGIBLE
TELECOMMUNICATIONS CARRIER

DOCKET NO.
19-00002

ORDER APPROVING PETITION TO BE DESIGNATED
AN ELIGIBLE TELECOMMUNICATIONS CARRIER

This matter came before Commissioner Herbert H. Hilliard, Commissioner John Hie and Commissioner David F. Jones of the Tennessee Public Utility Commission (“TPUC” or “Commission”), the voting panel assigned to this docket, at a regularly scheduled Commission Conference held on January 22, 2019, for consideration of the *Petition of Ben Lomand Communications, LLC to Be Designated an Eligible Telecommunications Carrier* (“Petition”) filed by Ben Lomand Communications, LLC (“BLC,” “Company” or “Petitioner”) on January 2, 2019, requesting designation as an Eligible Telecommunications Carrier pursuant to 47 U.S.C. § 214(e).

BACKGROUND AND PETITION

BLC is a competing local telecommunications exchange carrier (“CLEC”) established as a limited liability company in the State of Tennessee. BLC was granted a Certificate of Convenience and Necessity (“CCN”) to provide telecommunications services in Warren and White Counties in Docket No. 98-00600.¹ The Commission granted BLC’s request to modify its

¹ *Petition*, p. 2 (January 2, 2019). See also *In Re: Application of Ben Lomand Communications, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services as a Competing Telecommunications Provider*, Docket No. 98-00600, *Order Granting Certificate of Convenience and Necessity* (April 28, 1999).

CCN to include statewide service in 2008.² BLC has also been granted designation as an Eligible Telecommunications Carrier (“ETC”) in Warren and White Counties by the Commission.³

In its *Petition*, BLC seeks designation as an ETC in Coffee, Franklin, and Marion Counties in the State of Tennessee. BLC’s *Petition* states that it owns copper and fiber facilities in Coffee County and Franklin County and has been awarded federal and state grants for construction of facilities in Coffee, Franklin, and a portion of Marion Counties. BLC asserts that such designation will facilitate the ability of BLC to serve future broadband customers and to submit requests for and obtain federal grant funds.⁴ Along with its *Petition*, BLC provided relevant documentation filed the testimony of Company President, Lisa Cope, and a map of the current and future service areas of BLC for which ETC Designation is sought.⁵

HEARING ON THE MERITS

A Hearing in this matter was held before the voting panel of Commissioners during the regularly scheduled Commission Conference on January 22, 2019, as noticed by the Commission on January 11, 2019. Participating in the Hearing were the following parties:

Ben Lomand Communications, LLC – Josiah Reid, Esq., and John Baxter, Esq., Nelson Mullins Riley & Scarborough, LLP, 150 Fourth Avenue North, Suite 1100, Nashville, Tennessee 37219; Lisa Cope, BLC President, 311 N. Chancery Street, McMinnville, Tennessee 37110.

No persons sought intervention prior to or during the Hearing. At the Hearing, the panel heard testimony from Lisa Cope, President of BLC, on behalf of the Company. In his opening statement prior to testimony, Mr. Reid provided information that prior to the filing of the *Petition*, BLC won a competitive reverse auction process for universal service support under the Connect America II Fund, but ETC designation is a prerequisite to receipt of these funds. Ms.

² *Id. See also In Re: Petition of Ben Lomand Communications, LLC to Modify Its CCN*, Docket No. 08-00210, *Order Granting Amendment to Certificate of Public Convenience and Necessity* (January 13, 2009).

³ *Id. See also In Re: Universal Service Proceeding*, Docket No. 97-00888, *Order Designating Ben Lomand Communications, Inc. as an Eligible Telecommunications Carrier* (January 8, 2001).

⁴ *Id.* at 3-7.

⁵ *Id.* at Exh. E & Exh. F.

Cope testified that BLC had received a Community Connect Grant through the U.S. Department of Agriculture and a grant established in the Tennessee Broadband Accessibility Act. These funds will be used to construct a fiber-to-the-premises network in order to provide reliable communications service in a grossly underserved area.⁶

In addition, members of the public were given the opportunity to present comments to the panel. No members of the public sought recognition to do so.⁷

STANDARD FOR COMMISSION APPROVAL

Commission approval is required for designation as an ETC pursuant to the Telecommunications Act of 1996, 47 U.S.C.A § 214(e), which provides, in relevant part:

(e) Provision of universal service

(1) Eligible telecommunications carriers. A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible

⁶ Transcript of Hearing, pp. 24-26 (January 22, 2018).

⁷ *Id.* at 27.

telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.⁸

FINDINGS AND CONCLUSIONS

The Commission's review of an ETC designation request focuses on whether the applicant offers and advertises the availability of required services in accordance with applicable law and the request is consistent with the public interest, convenience, and necessity. The panel found that BLC is aware of and in compliance with the requirements of obtaining and maintaining an ETC designation, and currently holds an ETC designation awarded by this Commission for Warren County and White Counties. Further, the panel found that BLC currently provides the required services through its own facilities or through the services of another facilities-based carrier or vendor with whom BLC has contracts and will continue to provide these required services in the counties for which ETC designation is sought. In addition, BLC provided evidence of its promotion and advertising of these services and the charges for such services by means of media of general distribution in accordance with applicable laws and rules. BLC has stated its intention to continue the promotion and advertisement of these services in the counties for which designation is sought.

The panel further found that designation of BLC as an ETC in Coffee, Franklin and Marion Counties will promote competition among telecommunications providers, which assists in providing service to underserved areas, reducing prices for services, and increasing the quality of the services provided. BLC's *Petition* and its proposed services through the ETC designation would inure to the benefit of the present and future public interest, convenience, and necessity by permitting competition in the telecommunications services markets in the designation Counties and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

Based upon these findings, the panel voted unanimously to approve the *Petition*, and designated BLC an ETC in Coffee County, Franklin County, and Marion County within the State of

⁸ 47 U.S.C.A. § 214(e)(1)-(2)

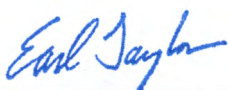
Tennessee.

IT IS THEREFORE ORDERED THAT:

1. The *Petition* filed by Ben Lomand Communications, LLC on January 2, 2019, is approved.
2. Ben Loman Communications, LLC is designated an eligible telecommunications carrier in Coffee County, Franklin County, and Marion County for the purpose of receiving federal universal service support.
3. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.
4. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

Commissioner Herbert H. Hilliard, Commissioner John Hie and Commissioner David F. Jones concur. None dissent.

ATTEST:



Earl R. Taylor, Executive Director