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October 23, 1998

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OCT 26 1998

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

TN REGULATORY AUTHORITY

Re: Ben Lomand Communications, Inc.
CLEC Application
Docket 98-00600

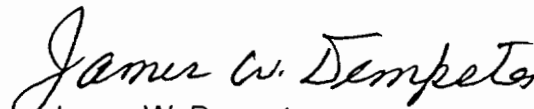
As requested by your letter of October 14, 1998, wherein the TRA requested that BLC respond to six questions by October 28, 1998, to assist the TRA in its review of the BLC application, we have prepared a response. We are enclosing with this letter an original response with 13 copies.

Should there be other questions that TRA wishes to have answered by Ben Lomand Communications, Inc., please do not hesitate to contact either me or Mr. Levoy Knowles.

If additional explanation or more detail is required as to answer of any of the six questions propounded or to the responses thereto, please let us know.

My plans are to be out of the states from the 24th of October through November 2; and if an immediate response is needed during that period, I would suggest that you contact Mr. Levoy Knowles, Executive Vice President of BLC. His address and telephone number are on the response.

Very truly yours,


James W. Dempster

JWD:bw

Enclosures

Certified w/card return

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

COPY

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OCT 26 1998

TN REGULATORY AUTHORITY

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)
SERVICE PROVIDER)

Docket No. 98-00600

RESPONSE OF APPLICANT, BEN LOMAND COMMUNICATIONS, INC.,
TO TRA'S REQUEST THAT BEN LOMAND COMMUNICATIONS, INC.
RESPOND TO CERTAIN QUESTIONS SET OUT IN LETTER OF
TENNESSEE REGULATORY AUTHORITY DATED OCTOBER 14, 1998

Applicant, Ben Lomand Communications, Inc., responds to the Tennessee
Regulatory Authority's first request for answers to questions set out in a letter dated
October 14, 1998, addressed to James Dempster, General Counsel, Ben Lomand
Communications, Inc., signed by David Waddell, Executive Secretary.

REQUEST FOR RESPONSE NO. 1: Are telephone cooperatives exempt by
statute from local exchange telephone competition?

RESPONSE: Based upon opinion of counsel, telephone cooperatives organized
and/or existing under the "Telephone Cooperative Act" Tennessee Code Annotated Title
65, Chapter 29, Section 101 et seq (TCA § 65-29-101 et seq) are exempt from telephone
competition.

ANALYSIS: The response to this question as well as other questions propounded by the Tennessee Regulatory Authority and specifically questions 1, 2, and 3 are made on Tennessee law and exclude federal laws, regulations, and decisions which might supersede state law and also exclude constitutional challenges as to the Tennessee statutes which grant the exemptions. BLC's response is based upon the following:

Tennessee Code Annotated 65-29-102 under the heading "Purpose of cooperatives -- Nonprofit corporations" sets out the following:

Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of furnishing telephone service in rural areas to the widest practical number of users of such service; provided, that there shall be no duplication of service where reasonably adequate telephone service is available. Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereafter referred to as "cooperatives," and shall be deemed to be not-for-profit corporations.

The key words in this section so far as response to this question is concerned is "that there shall be no duplication of service where reasonably adequate telephone service is available." It is our opinion that in the year 1961, when this act was passed, those territories which had been developed and served by nonprofit organizations and rural areas which were not being served by either for-profit corporations or other type of entities could be served by cooperatives, and once they had established a service area, it/they would be protected from competition. This language was also put into the statute for the protection of existing telephone companies who were giving reasonably adequate telephone service in their service area, which, in short, would prevent the pirating of customers, members, patrons, etc. The language was important to cooperatives in

Note: Unless otherwise indicated by an asterisk, all underlining is that of the respondent and is not contained in the original text from which the original quote is taken and is underlined only for emphasis.

that it protected their territory and made the obtaining of financing easier and at probably better rates of interest, and it certainly was important to existing for-profit companies in that telephone cooperatives, who by the nature of the territory which they serve and/or were created to serve, were given certain governmental advantages which were not available to for-profit corporations, partnerships, and associations. Some of those governmental incentives are still necessary in the development and furnishing of adequate telephone service to rural and remote areas, and there is no protection of the for-profit companies through the Tennessee Regulatory Authority as that agency has only limited jurisdiction over cooperatives as set out in Tennessee Code Annotated 65-29-130 (Acts of 1995, Chapter 305, Section 39); therefore, the protection of TCA 65-20-102 is still applicable.

Ben Lomand Communications, Inc., through its attorney, is aware of Tennessee Code Annotated 65-4-201, which is applicable to Ben Lomand Communications, Inc. and probably is not applicable to cooperatives. BLC's general counsel has given an opinion that subsection (d) does not give Ben Lomand Rural Telephone Cooperative, Inc. an exemption as the Cooperative is not a public utility. There are others in the legal field who have interpreted Tennessee Code Annotated 65-4-201(d) as giving cooperatives an exemption. BLC's position is that section (d) would not be applicable to telephone cooperatives existing or operating under Tennessee Code Annotated 65-29-101 et seq. TCA 65-4-101 defines a public utility, and in that definition, it excludes certain types of entities that are not to be included in the definition of public utility as follows:

"Public utility" as herein defined shall not be construed to include the following (hereinafter called nonutilities):

- (1) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) Any cooperative organization, association, or corporation not organized or doing business for profit;

The definition of public utility set out in Tennessee Code Annotated 65-4-101 would include a subsidiary organized as a Tennessee for-profit corporation but would not include a cooperative who owns stock therein.

It is the interpretation of Ben Lomand Communications, Inc. that Section 65-4-201(c) embodies not only public utilities, as set out in (a), (b), but includes any type of organization or entity which might be classified as a competing telecommunications service provider as defined in TCA Section 65-4-101. Definition (e) as follows:

"Competing telecommunications service provider" means any individual or entity that offers or provides any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services and is certificated as a provider of such service after June 6, 1995 unless otherwise exempted from this definition by state or federal law.

The exemption under Section 65-4-201 under subsection (d) applies to "an incumbent local exchange telephone company", and a cooperative does not meet the definition. A cooperative is a telecommunications service provider.

REQUEST FOR RESPONSE NO. 2: If telephone cooperatives are exempt, would approval of this filing affect the exemption of BLRTC?

RESPONSE: It is the opinion of the general counsel of Ben Lomand Communications, Inc., upon which our response is based, it would not affect the exemption of BLRTC.

ANALYSIS: Telephone cooperatives are exempt under the laws of the state of Tennessee and by federal laws so long as reasonably adequate service is being furnished by the cooperative. Under Tennessee Code Annotated 65-4-101, BLRTC has been certified as an incumbent local exchange carrier providing basic local exchange telephone service and several non-basic services as defined in Tennessee Code Annotated Title 65, Chapter 4 and 5. Referring to the exemption set out in Tennessee Code Annotated 65-4-201(d), cooperatives were not included in this exemption, according to Ben Lomand Communications, Inc.'s general counsel, as the Legislature by

statements made on the Senate floor and by letters to the House floor leader assured that cooperatives were exempt under Tennessee Code Annotated 65-29-201 et seq. as set out in our previous answer. The reasoning behind the decision of Ben Lomand Communications, Inc.'s counsel is basically the literal definitions as set out in Tennessee Code Annotated

65-4-101 headed "Definitions". Subsection (d) of 65-4-201 states:

Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

The exemption goes to incumbent local exchange telephone companies.

Tennessee Code Annotated 65-4-101 under definitions subsection (d) states:

"Incumbent local exchange telephone company" means a public utility offering and providing basic local exchange telephone service as defined by § 65-5-208 . . .

If by some stretch of the imagination and using a literal interpretation and construction of the statutes a cooperative would be held to be exempt under TCA 65-4-201(d), it would not lose its exemption unless that exempt entity applied for a certificate to provide telecommunications service or unless such company voluntarily enters into an interconnection agreement. The key in this particular sentence is the word "voluntarily."

REQUEST FOR RESPONSE NO. 3: Are cooperatives legally allowed to provide local exchange telephone service in areas served by Incumbent Local Exchange Carriers?

RESPONSE: Based upon opinion of counsel of Ben Lomand Communications, Inc., a cooperative is precluded under Tennessee Code Annotated Section 65-29-102

from providing local exchange telephone services in areas served by an incumbent local exchange carrier whether it be a company, cooperative, or mutual society if that area has reasonably adequate telephone service available. (See answers 1 & 2 above for ANALYSIS.)

REQUEST FOR RESPONSE NO. 4: In its CLEC application BLC has indicated that it plans to contract with BLRTC for the provision of necessary financial, managerial and technical services. Provide a detailed analysis addressing how shared labor costs, as well as, all shared and common costs will be allocated. Provide a narrative describing the steps that BLRTC will take to prevent to prevent cross subsidization of the operations of BLC. As part of your response include a copy of the cost allocation plan between BLRTC and BLC.

RESPONSE: Ben Lomand Communications, Inc. is a wholly-owned subsidiary of Ben Lomand Rural Telephone Cooperative, Inc. As additional equity investments are required, these will be made by BLRTC. Capital investments for construction and outside plant facilities will be financed by a combination of equity contributions and loans from an outside lending institution. BLC will be responsible for all interest and principal payments.

Most services for BLC and BLRTC will be handled separately. Both BLC and BLRTC currently have separate employees, separate buildings, separate advertising and marketing departments and separate customer support employees. All business office functions will continue to be handled separately by each entity. BLC is anticipating adding the needed personnel to handle the additional workload. The only common services will be handled as follows:

An operational manager for BLC would be assigned from BLRTC.

All costs incurred for the operational manager, including salary and overheads, will be directly assigned and paid by BLC to BLRTC. Additional managerial support staff would be provided by extending the existing

managerial contract paid by BLC to BLRTC for a period of six months.

During this six-months period, support staff will assign all time spent on BLC functions to a unique account code. At the end of the six-months period, total time assigned will be expressed as a percent of total labor cost. These factors will be used for the next six months, with a continuing actual time analysis. At the end of the second review period, the analysis will be reviewed and updated with successive updates being performed annually.

The application and customer contact process for service will be handled entirely by BLC. These functions will be handled by BLC employees and at BLC locations. The outside plant facilities will be the property of BLC but will be maintained on a contractual basis by BLRTC. BLRTC will provide installation, repair, and maintenance by assigning unique account codes to each work function. The direct labor cost would be directly assigned. The associated overheads, such as pension, workers' compensation, group health, payroll taxes, vacation, sick leave, etc. are assigned by an overhead expense matrix based on direct labor hours assigned to the account code. Incidental services such as motor vehicles, trouble reporting, and supervisory functions would be assigned based on the assigned hours as a ratio of total hours. This ratio would be applied to account totals and charged back to BLC.

Billing and collecting functions for BLC will be provided by BLRTC under contractual arrangement. An equitable rate will be established to reimburse the cooperative for all computer, paper products, software, support persons, etc. plus a reasonable rate of return.

Switching functions will be provided by BLRTC at rates comparable to those provided by BellSouth for similar interconnection charges.

REQUEST FOR RESPONSE NO. 5: Will the cost allocation plan discussed in item 4 be audited by an independent auditor? If so, how often? Will a separate opinion be issued on the cost allocation plan?

RESPONSE: An annual audit will be performed for each company with an opinion being issued. The audit will be performed by independent auditors. In the normal course of the audit, the cost allocations factors would be tested for reasonableness and accuracy for each company.

It is the intention of Ben Lomand Communications, Inc. unless otherwise ordered or directed by the Tennessee Regulatory Authority the audit is to be made one time a year.

Unless otherwise directed so to do, Ben Lomand Communications, Inc. does not plan to have a separate opinion issued on the cost allocation plan as it estimates that the cost would be substantial for a small competing local exchange carrier in that the costs would be borne by that company and not on Ben Lomand Rural Telephone Cooperative, Inc.

REQUEST FOR RESPONSE NO. 6: Will the company provide the TRA access to the books and records of both BLC and BLRTC to determine if the company is in compliance with the cost allocation plan?

RESPONSE: Presuming that the "company" refers to Ben Lomand Communications, Inc., it will provide the TRA access to the books and records of that company.

By action of the Board of Directors of Ben Lomand Rural Telephone Company, Inc., at a meeting held on October 15, 1998, a resolution was adopted which, among other things, provided that the officers of Ben Lomand Communications, Inc. in response to this particular question from TRA were authorized to state that the books and records of BLRTC would be available to that agency for the limited and specific purpose of the

Tennessee Regulatory Authority determining if Ben Lomand Communications, Inc. (the Company) is in compliance with the cost allocation plan.

Further questions or requests for explanation of any portion of the above answers made by the Tennessee Regulatory Authority to Ben Lomand Communications, Inc., the applicant, should be addressed to either of the parties signing this response on behalf of Ben Lomand Communications, Inc., and they will be given the Company's immediate attention and will be answered as rapidly as is reasonable.

Respectfully submitted,

BEN LOMAND COMMUNICATIONS, INC.

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