

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
PETITION FOR REGULATORY)	
EXEMPTION PURSUANT TO T.C.A.)	DOCKET NO. 08-00192
§ 65-5-108(b) TO INCREASE REGULATORY)	
PARITY AND MODERNIZATION)	

**CONSUMER ADVOCATE’S BRIEF ON WHETHER THE TRA HAS THE
JURISDICTION TO EXEMPT AT&T FROM THE STATUTORY REQUIREMENTS
CONTAINED IN TENN. CODE ANN. § 65-37-101 ET SEQ. REGARDING AT&T’S
BUNDLES**

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to the Hearing Officer’s order of January 23, 2009, hereby submits its brief on whether the Tennessee Regulatory Authority (“TRA”) has the jurisdiction to exempt AT&T from the statutory requirements contained in Tenn. Code Ann. § 65-37-101 et seq. regarding AT&T’s bundles. Order Establishing List of Issues and Setting a Procedural Schedule at page 23. As will be shown below, the TRA does not have the authority to exempt AT&T from the statutory requirements contained in Tenn. Code Ann. § 65-37-101 et seq. regarding AT&T’s bundles.

The statute under which AT&T is seeking exemption of services in this case, Tenn. Code Ann. § 65-5-108(b), clearly applies only to regulations in that “part” of the statute. Requirements governing bundling, however, are not in that “part” of Chapter 5, Part 1, but are in another “Chapter” and “Part,” namely Chapter 37, Part 1. Accordingly, the TRA should find that

it does not have the authority to exempt AT&T from the statutory requirements contained in Tenn. Code Ann. § 65-37-101 et seq. regarding AT&T's bundles.

THE SCOPE OF EXEMPTION IN THIS DOCKET MUST BE LIMITED TO ALL OR A PORTION OF THE REQUIREMENTS SET FORTH IN THE SECTIONS OF PART 1 OF CHAPTER 5 OF TITLE 65 OF THE TENNESSEE CODE

AT&T submitted a "Petition of AT&T Tennessee for Regulatory Exemption Pursuant to T.CA. 65-5-108(b) to Increase Regulatory Parity and Modernization" ("Petition"). Petition at 1. Thus, the very title of the Petition establishes that AT&T is basing its case for exemption on Tenn. Code Ann. § 65-5-108(b). This statute, however, authorizes the TRA to provide regulatory relief only from all or a portion of the requirements set forth in the Sections of Part 1 of Chapter 5 of Title 65 of the Tennessee Code:

The authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth in this part are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the authority may exempt telecommunications service providers from such requirements as appropriate. The authority shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.


Tenn. Code Ann. § 65-5-108(b) (emphasis added). "This part" plainly refers to the Sections of Part 1 of Chapter 5 of Title 65.¹

Bundles are governed by Tenn. Code Ann. § 65-35-101 et seq., i.e., Chapter 37, Part 1 of Title 65. Accordingly, it is beyond the scope of AT&T's request, as well as the TRA's authority, to exempt bundles from the regulatory requirements contained in Chapter 5, Part 1 of Title 65. In the words of a commercial that was famous some time ago, "Parts is Parts," and AT&T cannot escape the clear logic of that fact. It would be inappropriate, therefore, for the TRA to enter an

¹ The Tennessee Code has a tiered numbering system, consisting of title, chapter, part and section. For example, Tenn. Code Ann. § 65-5-108(b) is read as Title 65, Chapter 5, Part 1, Section 08, Subsection (b). See Tennessee Code User's Guide, Volume 11A, "Numbering System" at xii.

order exempting bundles from the requirements set forth in § 65-37-101 et seq. of the Tennessee Code or any of the associated TRA rules and regulations promulgated pursuant to such statutory authority.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Vance L. Broemel". The signature is written in dark ink and is positioned above the printed name and title.

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Dated: February 2nd, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

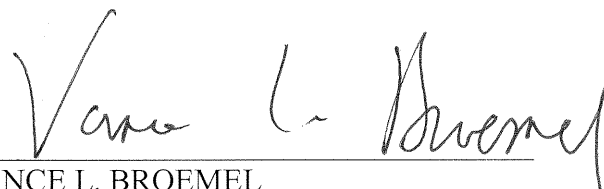
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This the 2nd day of February, 2009.


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