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Hon. Tre Hargett, Chairman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization*
Docket No. 08-00192

Dear Chairman Hargett:

Enclosed for filing in the referenced docket are the original and four copies of AT&T Tennessee's *Proposed Issues List and Statement Regarding Standard for Finding Competition Sufficient to Exempt Services.*

A copy has been provided to counsel of record.

Very truly yours,

Joelle Phillips

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization*

Docket No. 08-00192

**AT&T'S PROPOSED ISSUES LIST AND STATEMENT REGARDING STANDARD FOR FINDING COMPETITION SUFFICIENT TO EXEMPT SERVICES**

BellSouth Telecommunications, Inc. dba AT&T Tennessee ("AT&T") files this Proposed Issues List and Statement Regarding Standard for Finding Competition Sufficient to Exempt Services, pursuant to the Hearing Officer's direction.

**INTRODUCTION**

AT&T operates today in fierce competition with entities that are not subject to any TRA jurisdiction at all. Today, Tennesseans can hardly turn on the television, open the newspaper, or surf the web without being inundated with advertisements highlighting the fact that competition affords them choices for all of the services that AT&T offers. AT&T is prepared to demonstrate that fact – the existence of competition – in this docket.

Below AT&T sets forth its proposed statement of issues as directed by the hearing officer. As also directed by the hearing officer, AT&T responds to the hearing officer's request for a statement concerning the establishment of a "competition test" to be applied in this case. AT&T urges the Authority to find that the General Assembly has already set the relevant standard for relief.

Allowing the parties to seek some further regulatory or administrative "gloss" over and above the statute's plain articulation is improper. Moreover, engaging in a debate over the meaning of competition will delay, not streamline, this process. The TRA has been given a direct mandate by the General Assembly: ***"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."*** TCA 65-5-108(b). Engaging in a legal debate over the meaning of this clear and concise statement is not a helpful endeavor. Moreover, "restating" through regulation, what the legislature has stated with such clarity in legislation, would improperly blur the distinction in these branches of state government.

## I. Issues List

(1) Whether existing or potential competition is sufficient to exempt all currently regulated services in AT&T's Intrastate Service Tariffs, including the General Subscriber Services Tariff (GSST or A Tariff) and Private Line Tariff (B Tariff) in AT&T's Rate Groups 3 and 5.

(2) Whether existing or potential competition is sufficient to remove all bundles and promotions statewide from price regulation.

(3) Whether existing or potential competition is sufficient to eliminate all regulatory requirements imposed pursuant to Title 65, Chapter 5, Part I for all services provided to business customers statewide.

## II. Standard for Finding Competition Sufficient to Exempt Services

For purposes of the exemption statute (65-5-108(b), the General Assembly has stated that the relevant standard for exempting services is whether "existing and potential competition is an effective regulator of the price of those services."

The term "competition" is not a term of art, and it should be afforded its ordinary meaning in construing the statute. According to Merriam Webster's Ninth New Collegiate Dictionary, competition is "the effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms."

Applying the statutory language found in 65-5-108(b) and the common meaning of the term competition, the following factors would be appropriate for the TRA to consider in finding competition sufficient to exempt services:

(1) Whether the incumbent has experienced competitive losses;

(2) Whether competitors advertise or are otherwise known to offer services as a substitute for the incumbent's service, whether or not such services are provided using the same technology;

(3) Whether new technologies have been developed that can be used in substitution for the incumbent's service; and

(4) Whether the incumbent's business practices are altered to respond to competition.

Certainly, these factors are not an exhaustive list of the indicia of competition but would be more than sufficient to prove its existence.

The TRA is not new to the process of considering questions of competition. For example, in 2002 the TRA recommended that the FCC grant BellSouth's petition to enter the long distance market on the basis of its evaluation of the

Tennessee local exchange market. In fact, in that case, the TRA and the FCC found the Tennessee telecommunications market was irreversibly open to competition. Arguably, that finding alone should be sufficient to grant the relief AT&T seeks. Moreover, there can be no dispute that competition in Tennessee, particularly fierce inter-modal competition from the large cable companies, has grown greatly since 2002. Finally, the TRA has granted two exemptions in the past, for both primary rate ISDN service and for intraLATA toll service, without the need for additional articulation of the meaning of competition.

## CONCLUSION

The General Assembly included the exemption statute within its statutory framework for opening the telecommunications market to competition more than thirteen years ago. Even in 1995, the legislators recognized that the regulatory framework they were creating must not stay in place forever. Instead, they planned that, when the telecommunications industry had changed, then too the regulations should change. The legislators did not establish a hyper-technical standard for this determination. They did not create a "competitive checklist" or "benchmarks." They did not adopt any set of particular measures. Their approach was far more straight-forward and should be read in the common-sense language that they used.

A requirement that the parties must first engage in legal and policy debate before putting on evidence about competition threatens to delay this proceeding by transforming a straightforward look at market realities into a protracted academic debate. It is not surprising, however, that this approach finds support among the

AT&T competitors participating in this docket. The TRA need look no further than the intervenors list in this very proceeding to find competitors who actively seek, through delay and process, to maintain outdated regulations that afford them a competitive advantage. The TRA should consider with skepticism the suggestions of these parties about procedural matters, when those parties benefit from delay.

AT&T respectfully submits that the schedule for the case need not include any further consideration of a "standard" for competition when the statute alone provides more than sufficient guidance.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
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## CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2008, a copy of the foregoing document was served on the following, via the method indicated:

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