

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 4, 2008

IN RE:

**PETITION OF AT&T TENNESSEE FOR
REGULATORY EXEMPTION PURSUANT
TO T.C.A. 65-5-108(B) TO INCREASE
REGULATORY PARITY AND MODERNIZATION**

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**DOCKET NO.
08-00192**

**ORDER GRANTING PETITIONS TO INTERVENE
AND ESTABLISHING A PRELIMINARY PROCEDURAL SCHEDULE**

At a regularly scheduled Authority Conference held on November 10, 2008, Director Eddie Roberson, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority (“Authority” or “TRA”), the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint General Counsel or his designee as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion. This matter is before the Hearing Officer, upon filings by the parties, to consider petitions to intervene and to establish an issues list and a procedural schedule.

TRAVEL OF CASE

On October 9, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee (“AT&T” or the “Company”) filed its *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization* (“*Petition*”) in which the Company seeks relief from the regulatory requirements in Part 1 of Tenn. Code Ann. Title

65, Chapter 5. AT&T alleges that the services it is seeking to exempt “are subject to overwhelming competition through both inter-modal technologies and also through traditional telecommunications technology.”¹

On October 22, 2008, a petition to intervene was filed by the Competitive Carriers of the South, Inc. (“CompSouth”). On October 23, 2008, petitions to intervene were filed by TW Telecom of Tennessee, LLC (“TW Telecom”) and Tennessee Internet Service Provider Association, Inc. (“Tennessee Internet”). NuVox Communications, Inc. (“NuVox”) filed a petition to intervene on October 24, 2008. On November 3, 2008, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a petition to intervene.

A *Notice of Status Conference* was issued on November 10, 2008, setting a Status Conference for Monday, November 24, 2008 to establish an issues list and a procedural schedule. The Notice provided that any interested party desiring to participate in the Status Conference should file a petition to intervene not later than November 17, 2008, and that petitions to intervene filed by that date would be considered at the Status Conference. The Notice also stated that the discovery between the parties and the issuance of a protective order would be matters for discussion during the Status Conference. On November 17, 2008, the Tennessee Cable Telecommunications Association (“TCTA”) filed a petition to intervene.

¹ *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization*, p. 7 (October 9, 2008).

STATUS CONFERENCE

The Status Conference was convened on November 24, 2008. In attendance at the Status Conference were the following parties represented by counsel:

AT&T – Guy Hicks, Esq. and Joelle Phillips, Esq., 333 Commerce Street, Nashville, TN 37201;

Consumer Advocate and Protection Division - Vance Broemel, Esq., Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202;

CompSouth and NuVox Communications – Henry M. Walker, Esq., Boulton, Cummings, Conners & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203;

TW Telecom and TCTA – Charles B. Welch, Jr., Esq., Farris Mathews Bobango PLC, 618 Church Street, Suite 300, Nashville, TN 37219; and

Tennessee Internet – Paul F. Rice, Esq., P.O. Box 1692, Jackson, TN 38301.

Also participating in the Status Conference telephonically were Susan Berlin on behalf of NuVox and Doug Nelson on behalf of Sprint, which is a member of CompSouth.

Petitions to Intervene

At the outset of the Status Conference, the Hearing Officer addressed the petitions to intervene. Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the

proceedings shall not be impaired by allowing the intervention.

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion. No party or person filed an objection to or opposed the intervention requests in this docket.

Applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the petitions of CompSouth, TW Telecom, Tennessee Internet, NuVox, TCTA and the Consumer Advocate.

Issues List

Because of the nature of this proceeding, the Hearing Officer proposed that the parties consider entering into stipulations as to those services for which there is no question that sufficient competition exists to exempt them from regulation. The parties agreed to pursue stipulations to remove certain services from consideration in this proceeding. A discussion then ensued regarding the formation of a list of issues for resolution in this docket. The Hearing Officer proposed that certain benchmarks or standards be established by which to measure whether services should be deregulated. Establishing these benchmarks at the commencement of this action would help frame the discovery and pre-filed testimony that will follow. After discussion, the Hearing Officer determined that the parties propose certain issues to be determined before moving forward with a complete procedural schedule. It was decided that AT&T will submit a list of proposed issues initially, after which the Intervenors would respond to AT&T's proposals and provide their lists of proposed issues. As a part of its filing, AT&T will propose a test that it would use in determining whether competition exists.²

² AT&T will also respond to the Hearing Officer's question regarding whether the requested exemption will have an impact on state universal service requirements.

Preliminary Procedural Schedule

After discussion with the parties, the Hearing Officer established the following preliminary procedural schedule for the entry of a protective order and the development of an issues list:

December 2, 2008	Parties to submit agreed Protective Order or submit separate proposed protective orders.
December 4, 2008	AT&T to file with the Authority a list of proposed issues and circulate to the Intervenors a list of proposed stipulations.
December 11, 2008	Intervenors to file with the Authority a list of proposed issues.
December 11, 2008	Parties to file with the Authority stipulations as to the deregulation of any services, rate groups or exchanges and customer classes.

All filings with the Authority are due by 4:00 p.m. on the date of filing.

Protective Order

In addressing the entry of a Protective Order, AT&T stated that this case would involve a “substantial amount of competitively sensitive information.” The Hearing Officer directed the parties to work together to submit an agreed protective order and suggested that the parties review protective orders entered in other TRA dockets to serve as a model. The parties agreed to submit a proposed protective order to the Hearing Officer or individually to submit proposed protective orders by December 2, 2008. On December 2, 2008, AT&T submitted a proposed protective order to which all parties except the Consumer Advocate have agreed. On December 3, 2008, the Consumer Advocate requested an opportunity to respond to the filing and comments made by AT&T on December 2, 2008. The Consumer Advocate further requested that its response be due on December 9, 2008.

IT IS THEREFORE ORDERED THAT:

1. CompSouth, TW Telecom, Tennessee Internet, NuVox, TCTA and the Consumer Advocate are granted leave to intervene and receive copies of any notices, orders or other documents herein.

2. The preliminary Procedural Schedule, set forth in this Order, is in full force and effect.

3. The Consumer Advocate shall respond by December 9, 2008 to AT&T's comments and the proposed protective order filed on December 2, 2008. Afterward, the Hearing Officer will proceed to enter a Protective Order.


Richard Collier, Hearing Officer