

**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 PROPOSED ISSUES LIST AND STANDARD FOR
FINDING THAT COMPETITION IS AN EFFECTIVE REGULATOR OF PRICES**

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 in this case, hereby submits its Proposed Issues List and Standard for Finding that Competition Is an Effective Regulator of Prices.

1. ISSUES

BellSouth Telecommunications, Inc. dba AT&T Tennessee (“AT&T”) filed its Proposed Issues List and Statement Regarding Standard for Finding Competition Sufficient to Exempt Services on December 4, 2008. From the very title of this submission it is clear that AT&T does not intend to submit the proof required under Tennessee law to establish that the telecommunications services at issue in this case should be deregulated. What Tennessee law requires for deregulation of services, as set forth in Tenn. Code Ann. § 65-5-108(b), is proof that “. . . existing and potential competition is an effective regulator of the price of services.” (Emphasis added.) Thus, the key point under Tennessee law is not, as AT&T implies, whether competition exists, but whether such competition as exists is an “effective regulator of prices.”

This flaw in AT&T's reasoning regarding the standard to be used in this case is also evident in the very language AT&T uses to describe the issues; note the omission of any reference to the need to show that competition is "an effective regulator of the price of those services" sought to be deregulated:

- (1) Whether existing or potential completion is sufficient to exempt all currently regulated services in AT&T's Interstate Service Tariff, 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 1 for all services provided to business customers statewide.

AT&T Proposed List of Issues at page 2.

Accordingly, when the Issues List for this case is formulated, it should be clear that the key issue is not whether AT&T can give verbal descriptions of competition, but whether there is enough proof to convince the TRA that there is sufficient competition to serve as an "effective regulator" of prices. Furthermore, that proof should be by specific service and by specific location; general statements that Comcast has billboards along Nashville interstates, for example, should not be sufficient to exempt all services in all of Davidson County.

Finally, with regard to item three in AT&T's list of issues above, namely whether all regulatory requirements in Title 65, Chapter 5, Part 1, should be removed, the Consumer Advocate agrees that this is an issue but we oppose the removal of all such requirements. In

essence, these requirements go to general behavior such as price squeezing or other anticompetitive behavior and are not limited to the regulation of a specific service. These requirements, therefore, should remain in place.

2. STANDARD FOR FINDING COMPETITION SUFFICIENT TO ACT AS AN EFFECTIVE REGULATOR OF PRICES

As set forth above in Section 1, AT&T has completely ignored the issue of whether competition is an effective regulator of prices as required under Tennessee law. Tenn. Code Ann. § 65-5-108(b). Similarly, the AT&T proposed “standard” to be used for finding competition in this case is flawed by the same omission.

In an effort to provide some real benchmarks to measure whether competition is an effective regulator of prices the Consumer Advocate would propose that the TRA adopt as a starting point the measures used in a recent Missouri case involving the deregulation of telecommunications services under a price cap plan, Coffman v. Public Serv. Comm’n, 2004 WL 2157225. In Coffman, a Missouri appeals court considered whether the Missouri public service commission properly exempted SWB’s services from regulation under a state price-cap statute that provided for such exemption upon a finding of “effective competition.” To determine whether the statute’s “effective competition” standard was met, the commission considered evidence concerning: (1) the number of carriers certified to provide service in each exchange; (2) the number of carriers actually providing both resale and facilities-based service in the exchanges; (3) the relative longevity of those alternative carriers; (4) the presence of CLEC-owned facilities; (5) SWB’s loss of market share in the various exchanges; and (6) the degree to which competitors had utilized pricing strategies to obtain significant market share. Coffman at

*4. In rejecting public counsel's claim that the commission took insufficient evidence, the appellate court stated:

If SWB is losing market share on specific services in specific exchanges, that fact is evidence that those services are extensively available from alternative providers in those exchanges, that the alternative companies' services are functionally equivalent or substitutable, and that economic or regulatory barriers to entry are not preventing the alternatives from competing.

Coffman at *5. While the Missouri commission's decision was overturned, the reversal was based on other grounds.

Of these factors from Coffman, the TRA should pay particular attention to data regarding market share for each specific service sought to be deregulated. This means that the proof regarding competition should establish AT&T's market share as well as that of their competitors as far as possible, with an indication of the geographic location of those specific services as well.

In addition, the Coffman factor regarding resale and facilities-based service is critical in determining the required level of competition. If competitors are dependent upon AT&T facilities that is a factor the TRA should consider in determining how likely competition is to be an effective regulator of price.

Accordingly, the Consumer Advocate is of the opinion that the TRA should require more than AT&T's unsupported assertion of existing or potential competition as a standard in this case. The TRA should not be satisfied with mere anecdotal evidence of customers switching from AT&T to another carrier or by statements from attorneys about the level of competition in Tennessee.

RESPECTFULLY SUBMITTED,



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Dated: December 11th, 2008.

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:

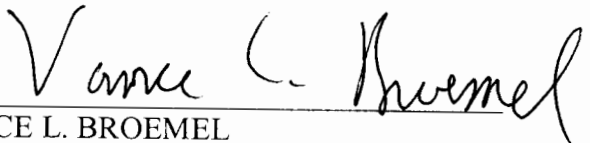
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This the 11th day of December, 2008.


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