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December 11, 2008

VIA HAND DELIVERY

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.*

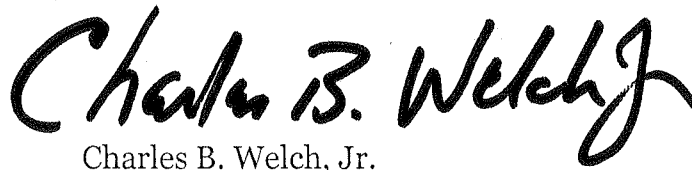
Dear Chairman Hargett:

Enclosed for filing in the referenced docket are the original and four copies of the *Proposed Issues List Filed on Behalf of the Tennessee Cable Telecommunications Association*.

A copy has been provided to counsel of record by the method indicated on the service of process.

Very truly yours,

FARRIS MATHEWS BOBANGO, PLC


Charles B. Welch, Jr.

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

**PROPOSED ISSUES LIST AND COMMENT REGARDING STANDARD FOR
COMPETITION NECESSARY TO EXEMPT REGULATED SERVICES FILED
ON BEHALF OF tw telecom of tennessee llc**

In accordance with the *Order Granting Petitions to Intervene and Establishing a Preliminary Procedural Schedule*,¹ tw telecom of tennessee llc ("TWTC") hereby files its Proposed Issues List and Comment Regarding Standard of Competition Necessary to Exempt Regulated Services.

INTRODUCTION

TWTC offers this response to *AT&T's Proposed Issues List and Statement Regarding Standard for Finding Sufficient Competition Sufficient to Exempt Services* ("Statement").² A reading of the statement regarding competition reveals a fundamental discrepancy as to the identity of those issues germane to this docket. AT&T's entire purpose in its original filing is to seek exemption under TCA § 65-5-108(b), a request requiring a thorough examination of competition as an effective regulator in some defined market area. "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). AT&T is correct when it places focus on the

¹ *Order Granting Petitions to Intervene and Establishing a Preliminary Procedural Schedule*, December 4, 2008 ("*Procedural Order*").

² TWTC adopts and supports CompSouth's Proposed Issues List and offers its proposal in addition and as a compliment to the CompSouth filing.

necessity of “competition.” Where AT&T fails in its analysis is what that term means in the context of the telecommunications industry, the intervening parties in this docket, and the role of the Authority in this analysis.

AT&T has asserted, in its Statement, “competition” should be evaluated by this Authority using Webster’s Dictionary. They have even gone so far as to maintain that “the term ‘competition’ is not a term of art.” Statement at 3. “Competition,” within the telecommunications arena, is most certainly a term of art. “The effort of two or more parties acting independently to secure the business of a third party by offering the most favorable terms,” is the Webster’s definition AT&T has provided as the linchpin of its analysis of whether 65-5-108(b) has been satisfied. This painfully narrow view ignores the broader scope of the Authority’s role in this docket. It is unreasonable to contend the Tennessee General Assembly intended for the Authority to examine the complexities of the telecommunications industry with such a restricted, non-specialized interpretation of terms so critical to the parties the Authority was created to regulate for the protection and benefit of Tennessee consumers.

The more appropriate approach is a macro-view of the environment regulated by the Authority. Unless competition is evaluated within certain parameters and designed to consider competition on a global basis, no meaningful or accurate analysis of “competition” as an “effective regulator of the price of those services” can be complete. It is within this framework TWTC submits its proposed issues.

Proposed Issues

1. Is it possible for competition to serve as an effective regulator of price and quality of retail services absent intensified regulatory oversight of the Incumbent’s wholesale services and processes necessary to provide the very competition relied upon as the regulator?

2. What additional reporting requirements, service quality standards, and pricing requirements for wholesale services should be implemented as a condition to the grant of AT&T's petition?
3. What rules designed to prevent anti-competitive practices should be adopted, as contemplated by TCA § 65-5-108 (c), to ensure sustainable competition in the deregulated environment created by the grant of AT&T's petition?
4. What effect has recent state legislation deregulating special contracts, bundled services and broadband deployment had upon competitive markets and is there any evidence to support further deregulation at this time?
5. What conditions to the grant of AT&T's petition are necessary to ensure the Incumbent maintains its wholesale service offerings and interconnections obligations regardless of changes in underlying technology?

Standard for Competition Necessary to Exempt Regulated Services

In order to appropriately apply the exemption statute, TCA § 65-5-108 (b), the Authority must adopt some objective definition or standard for competition or potential competition which is to be expected to provide effective regulation. Without any standard, measure or definition, how would the Authority ever know when the broad statutory test has been satisfied? TWTC submits the following factors should be considered, on an exchange by exchange basis and differentiated by residential retail, business retail and wholesale markets, without exclusion to others which might be developed during the course of this proceeding:

- (1) The number of non-affiliated facilities-based carriers providing service;
- (2) Whether the incumbent has experienced a significant loss of access lines to its competitors;
- (3) The relative market share of each provider for business customers;
- (4) The relative market share of each provider for residential customers; and

- (5) The extent AT&T has retained market share through its wireless services;
- (6) The extent AT&T has retained market share through the provision of underlying services to its wholesale carrier customer now providing service to the end user customer.

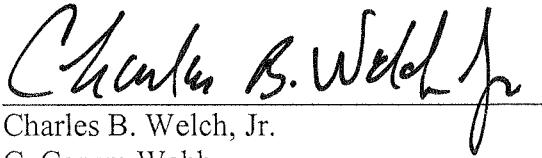
Conclusion

A definable standard of proof must be maintained in this matter. If “competition” were merely a word to be invoked from ambiguous and non-directive sources, the General Assembly would not have entrusted its use and interpretation to such an austere body as the Authority. The Intervenor take issue with AT&T’s characterization of their goals in this intervention. Indeed, this Authority may reference AT&T’s conclusion in which it is posited, “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.” Statement at 5. AT&T boldly asserts that intervention by interested entities by way of the processes and laws of the State of Tennessee should be viewed, on its face, as evidence of intentional delay to be viewed with “skepticism.” Such an assertion reveals AT&T’s view that even state law and the due process rules of the Authority should not interfere with or in any way delay its immediate goals or business plan. AT&T’s obvious contempt for the process should be a concern to all interested parties. An academic study of the market modalities affecting all existing parties going forward is necessary to establish whether the scope and purpose of the original regulations themselves have been fully satisfied.

TWTC respectfully requests the Authority conduct a thorough review of the actual and prospective economic effects of granting the Petition, and submits that such a review would reveal the need to maintain current regulation in part and to develop a new wholesale service regulatory environment to avoid the very perils the state law was enacted to combat. The goals, aims and resolve of the state legislature and its charge to the Authority remain as immutably intact today as when originally created.

Respectfully submitted,

tw telecom of tennessee llc

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CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2008, a copy of the foregoing document was served on the following, via the method indicated:

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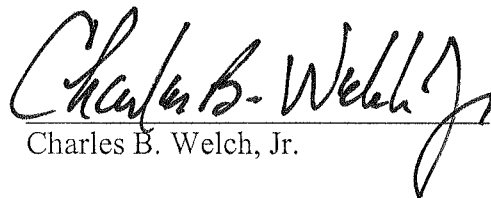
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