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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.*

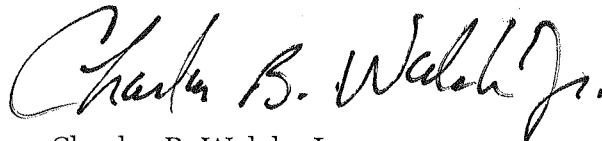
Dear Chairman Hargett:

Enclosed for filing in the referenced docket are the original and four copies of the *Proposed Issues List and Comment Regarding Standard for Competition Necessary to Exempt Regulated Services Filed on Behalf of tw telecom of tennessee llc.*

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

A handwritten signature in black ink, reading "Charles B. Welch Jr." in a cursive script.

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 FILED ON BEHALF OF THE TENNESSEE CABLE
TELECOMMUNICATIONS ASSOCIATION**

In accordance with the *Order Granting Petitions to Intervene and Establishing a Preliminary Procedural Schedule*,¹ the Tennessee Cable Telecommunications Association (“TCTA”) hereby files its Proposed Issues List.

INTRODUCTION

The TCTA offers this response to *AT&T’s Proposed Issues List and Statement Regarding Standard for Finding Sufficient Competition Sufficient to Exempt Services* (“Statement”).² Reading the issues list and the statement regarding competition reveals a fundamental flaw as to the identity of the issues relevant 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 necessity of “competition.” AT&T obviously fails, however, in its consideration of the

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

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

term's meaning 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 parameters particular to the telecommunications arena and considers competition on a global basis, no meaningful analysis of "competition" as an "effective regulator of the price of those services" can be complete. It is within this framework these Intervenors submit their 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 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?

Conclusion

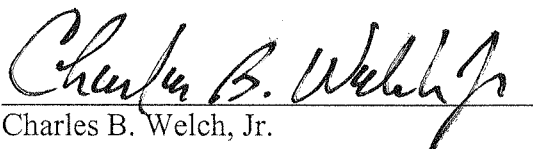
Rather than merely accepting AT&T's plainly incorrect assertions regarding the nature of any "standard" established by the General Assembly, a broader consideration must be established in this matter. If "competition" were merely a word to be invoked from ambiguous and non-directive sources, the General Assembly would not have entrusted its use and interpretation to an agency such as the Authority capable of analyzing complex telecommunications issues. TCTA takes issue with AT&T's characterization of its 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 (1) 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 and (2) is manifestly contradicted by the unique focus of TCTA's issues list. TCTA seeks no

delay and respects and greatly appreciates the opportunity to avail itself of the process which permits affected parties to address the competitive advantages AT&T has long enjoyed simply by virtue of its incumbency. TCTA is entirely disinterested in maintaining truly 'outdated' regulations but submits that AT&T's narrow view of competition and the issues in this docket indicates it will not even *attempt* to make a credible case supporting the relief sought. Finally, TCTA offers its issues list, which has as its underlying impetus actual and current market misbehavior, in the spirit of the regulatory framework created by the General Assembly in 1995 wherein – as characterized by AT&T – “when the telecommunications industry had changed, then too the regulations should change.”

TCTA respectfully requests the Authority conduct a thorough review of the actual and prospective telecommunications market effects of granting the Petition with a broader consideration. We believe such a review would reveal the need to maintain current regulation in part and to develop a new environment of market oversight 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,

Tennessee Cable Telecommunications Association

By: 

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C. Corum Webb

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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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- ☐ Electronic

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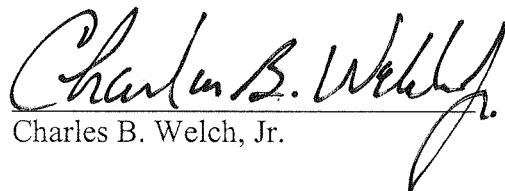
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