

STATE OF TENNESSEE

Office of the Attorney General



LUCY HONEY HAYNES
CHIEF DEPUTY ATTORNEY GENERAL

LAWRENCE HARRINGTON
CHIEF POLICY DEPUTY

ROBERT E. COOPER, JR.
ATTORNEY GENERAL AND REPORTER
CORDELL HULL AND JOHN SEVIER STATE
OFFICE BUILDINGS

MAILING ADDRESS
P.O. BOX 20207
NASHVILLE, TN 37202

MICHAEL E. MOORE
SOLICITOR GENERAL

TELEPHONE (615) 741-3491
FACSIMILE (615) 741-2009

April 21, 2011

Donald L. Scholes, Esq.
Branstetter, Stranch & Jennings, PLLC
227 Second Avenue North
Fourth Floor
Nashville, TN 37201-1631

FILED ELECTRONICALLY IN DOCKET OFFICE ON 04/21/11

Re: Lynwood Utility Corporation – Berry's Chapel Utility, Inc.
TRA Docket No. 11-0005

Dear Mr. Scholes:

On Monday, April 18, 2011, the TRA decided 3-0 that Lynwood/Berry's Chapel is a public utility subject to TRA regulation and that its \$20 per month increase was improper because it was done without TRA approval. In light of this decision, the Consumer Advocate is calling on Lynwood/Berry's Chapel to instruct the City of Franklin, which handles billing on behalf of the public utility, to reduce customers' bills accordingly.

On Monday the TRA also announced that it would open a docket to handle the issues of (1) refunding the \$20 per month increase for past months; and (2) possible action for violating statutes enforced by the TRA. The Consumer Advocate believes it is in the interest of the utility as well as its customers to avoid unnecessary expense and delay. Accordingly, the Consumer Advocate is requesting Lynwood/Berry's Chapel to immediately refund all prior increases as soon as possible.

A copy of the transcript of the April 18th TRA decision (pages 12-17) is attached for your review.

Sincerely,

A handwritten signature in dark ink that reads "Vance Broemel".

Vance Broemel
Assistant Attorney General
(615) 741-8733

Enclosure

CC: All Directors
Richard Collier, Esq.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

TRANSCRIPT OF AUTHORITY CONFERENCE

Monday, April 19, 2011

APPEARANCES:

For TRA Staff:

Ms. Sharla Dillon

Reported By:

Christina Meza Rhodes, LCR, RPR, CCR

1	INDEX		
2	DOCKET	DISPOSITION	PAGE
3			
4	SECTION 1 - AUTHORITY BUSINESS		
5	11-00022	Notice of Intent	4
6			
7	SECTION 2 - HILL, KYLE, AND ROBERSON		
8	(Miscellaneous Business - None)		
9			
10	SECTION 3 - HILL, FREEMAN, AND KYLE		
11	11-00025	Approved 3-0	5
12	11-00038	Approved 3-0	6
13	(Miscellaneous Business - None)		
14			
15	SECTION 4 - FREEMAN, KYLE, AND ROBERSON		
16	10-00042	Approved 3-0	7
17	10-00189	Approved 3-0	8
18	11-00005	Approved 3-0	12
19	11-00023	Approved 3-0	17
20	(Miscellaneous Business - None)		
21			
22	Section 5 - HILL, FREEMAN, AND ROBERSON		
23	10-00043	Approved 3-0	18
24	11-00024	Approved 3-0	19
25	(Miscellaneous Business - None)		

1 (The aforementioned Authority
2 Conference came on to be heard on Monday, April 19,
3 2011, beginning at approximately 1:00 p.m., before
4 Chairman Mary W. Freeman, Director Eddie Roberson,
5 Director Kenneth C. Hill, and Director Sara Kyle, when
6 the following proceedings were had, to-wit:)

7 CHAIRMAN FREEMAN: Good afternoon and
8 welcome to the Authority's April 18th, 2011, regularly
9 scheduled conference. At this time we will begin.

10 Madam Clerk, do we have anyone joining
11 us by phone?

12 MS. DILLON: We do. Chairman,
13 Directors, we have Katie Mapes with the United Workers
14 Union of America. We have Willa Kalaidjian with the
15 City of Chattanooga, and we have Jeanne Stockman with
16 CenturyLink.

17 CHAIRMAN FREEMAN: Thank you, and
18 welcome to those of you joining us by phone.

19 Before we begin with our dockets, I
20 would like to take a moment to recognize a friend. And
21 that friend is Mr. Kenny Blackburn. Kenny is -- I have
22 been told, is retiring at the end of this month, and I
23 wanted to just thank him for his work with the
24 Authority and his friendship over the years. I know I
25 speak on behalf of the Authority as well as the staff.

1 So, Kenny, congratulations on your
2 retirement and best wishes to you.

3 DIRECTOR KYLE: Absolutely. Thank
4 you. Congratulations.

5 CHAIRMAN FREEMAN: Thank you.

6 DIRECTOR KYLE: Job well done.

7 (Applause.)

8 DIRECTOR ROBERSON: There's no more
9 legislation to pass, is there? So he can retire.

10 CHAIRMAN FREEMAN: He's going home.

11 DIRECTOR HILL: I will tell him
12 privately what I've got to say.

13 CHAIRMAN FREEMAN: Madam Clerk.

MS. DILLON: Yes, today in Section 1,
Authority business, Docket No. 11-00022, MCC Telephony
of the South, LLC; MCC Telephony of the South, LLC,
notification of intent to operate pursuant to market
regulation; notice of intent.

19 CHAIRMAN FREEMAN: Thank you. This
20 company has filed a notification of intent to operate
21 pursuant to market regulation which is effective upon
22 filing with the Authority. This docket is on the
23 agenda for informational purposes and public notice
24 only. No formal action by the directors is required.

25 The Authority will take official

1 notice of the election of the above-mentioned
2 telecommunications provider to operate under market
3 regulation pursuant to Tennessee Code Annotated Section
4 65-5-109, and so stated for the record.

5 Next docket, Madame Clerk.

6 MS. DILLON: Next we have Section 2,
7 Directors Hill, Kyle, and Roberson.

8 Miscellaneous business?

9 DIRECTOR KYLE: None.

10 MS. DILLON: Next we have Section 3,
11 Directors Hill, Freeman, and Kyle.

12 Docket No. 11-00025, CenturyTel of
13 Claiborne; application of CenturyTel of Claiborne,
14 Inc., d/b/a CenturyLink Claiborne to enter price
15 regulation; consider petition.

16 CHAIRMAN FREEMAN: Thank you. On
17 February the 7th, 2011, CenturyLink Claiborne filed a
18 petition for approval to enter price regulation
19 pursuant to Tennessee Code Annotated Section 65-5-109.
20 The company states that it will comply with all
21 statutes, rules, and regulations applicable to
22 price-regulated companies, including complying with the
23 rate cap for basic local exchange telephone services.

24 CenturyLink Claiborne serves
25 approximately 6,200 residential and 1,700 business

1 customers in Claiborne County, including the cities of
2 New Tazewell and Sharps Chapel.

3 I move approval of the petition as
4 filed.

5 DIRECTOR KYLE: Second, vote yes.

6 DIRECTOR HILL: Vote aye.

7 MS. DILLON: Next we have Docket
8 No. 11-00038, Level 3 Communications, LLC; petition of
9 Level 3 Communications, LLC, for approval to
10 participate in certain financing arrangements; consider
11 petition.

12 CHAIRMAN FREEMAN: Thank you. Based
13 on the record, I would move approval of the financing
14 transaction pursuant to Tennessee Code Annotated
15 Section 65-4-109 based on the following findings. This
16 financing transaction is subject to Authority approval
17 pursuant to Tennessee Code Annotated Section 65-4-109.
18 The transaction is being made in accordance with the
19 laws enforceable by this agency, and the purpose of
20 this transaction is in the public interest because it
21 will provide Level 3 with the opportunity to strengthen
22 its competitive position through access to greater
23 financial resources on more favorable terms.

24 The authorization and approval given
25 hereby shall not be used by any party for the purpose

1 of inferring analysis or an assessment of the risks
2 involved. And the decision is not intended to create
3 any liability on the part of the Tennessee Regulatory
4 Authority, the State of Tennessee, or any political
5 subdivision thereof. I so move.

6 DIRECTOR KYLE: Second and vote yes.

7 DIRECTOR HILL: Vote aye.

8 MS. DILLON: Miscellaneous business?

9 CHAIRMAN FREEMAN: None.

10 MS. DILLON: Next we have Section 4,
11 Directors Freeman, Kyle, and Roberson.

12 Docket No. 10-00042, BellSouth
13 Telecommunications, Inc.; petition for arbitration of
14 interconnection agreement between BellSouth d/b/a AT&T
15 Tennessee and Sprint Spectrum LP, Nextel South Corp.,
16 and NPCR, Inc., d/b/a Nextel Partners; consider joint
17 petition.

18 CHAIRMAN FREEMAN: Thank you. The
19 Authority accepted the petition for arbitration filed
20 by AT&T Tennessee on March 19, 2010 in this docket and
21 in Docket No. 10-00043. On February the 9th, 2011, the
22 parties filed a joint motion to withdraw petitions and
23 close dockets in both of the arbitration dockets.

24 In the joint motion the parties
25 reported that they had agreed to amend their current

1 interconnection agreements to extend their term to
2 March 1st, 2012. The parties stated that because of
3 that agreement the parties had requested to close the
4 arbitration dockets upon the filing of the applicable
5 amendments to extend their existing interconnection
6 agreements. These amendments to the interconnection
7 agreements were approved at the March 28th, 2011
8 Authority conference.

9 Based on the record, I move to grant
10 the joint motion permitting AT&T to withdraw the
11 petition for arbitration without prejudice and that
12 this docket be closed based on the agreement of the
13 parties. I so move.

14 DIRECTOR KYLE: Second, vote yes.

15 DIRECTOR ROBERSON: Vote aye.

16 MS. DILLON: Next we have Docket
17 No. 10-00189, Tennessee American Company; petition of
18 Tennessee American Company for a general rate increase;
19 consider stipulation and industrial tariffs.

20 CHAIRMAN FREEMAN: Thank you. At the
21 April 4th, 2011 Authority conference, the panel
22 directed Tennessee American to file two sets of
23 tariffs. One reflecting an across-the-board increase
24 to all customer classes and individual rates, and the
25 other was to spread the revenue increase

1 proportionately across all customer classes and also
2 include the effects of the proposed settlement between
3 the Chattanooga Regional Manufacturers Association and
4 Tennessee American Water Company on industrial
5 customers.

6 Tennessee American maintains that
7 while the larger industrial customers will receive
8 lower rate increases than smaller industrial customers,
9 the effect can result in larger plant expansion and
10 more economic growth in the Chattanooga area.

11 The settlement agreement between the
12 Chattanooga Manufacturers Association and the company
13 only affects the rates within the industrial class.

14 On April 7th, 2011 the Utility Workers
15 Union of America filed its objection to the tariffs
16 filed by Tennessee American based upon its assertion
17 that neither tariff incorporates the reporting
18 conditions with respect to staffing and valve
19 maintenance issues placed on the company by the
20 Authority at the April 4th Authority conference.

21 The company responded on April 14th,
22 2011 opposing the union's objection.

23 To the panel, we need to address the
24 union's objection to the tariffs first, and I have --
25 and I do have a motion.

1 DIRECTOR KYLE: All right. So we'll
2 take that one first?

3 CHAIRMAN FREEMAN: Yes.

4 DIRECTOR KYLE: And then we'll get
5 back on the tariffs and stuff?

6 CHAIRMAN FREEMAN: That's correct.

7 I would move that the union's
8 objection be denied with regard to incorporating
9 Tennessee American's staffing and valve maintenance
10 reporting requirements into the tariffs, and based on
11 Tennessee American's agreement with the union's request
12 that the semiannual submissions be made in October and
13 April, I would move that the reports be filed on
14 October 5th and April 5th of each year. So move.

15 DIRECTOR KYLE: I agree. Second, vote
16 yes.

17 DIRECTOR ROBERSON: And I will also
18 vote yes. I don't think there is a need to put those
19 kinds of details in a tariff, but it will be
20 prescribed, I would assume, in the order, and so the
21 company will be required to comply with that order. So
22 I think that the order language is sufficient, so I
23 concur.

24 CHAIRMAN FREEMAN: Thank you. And now
25 we'll address the settlement agreement. I would move

1 approval of the settlement agreement filed by the
2 Chattanooga Regional Manufacturers Association and
3 Tennessee American and of the tariffs filed on
4 April 6th, 2011 reflecting the terms of the settlement
5 agreement. So moved.

6 DIRECTOR KYLE: I would like to read
7 my motion into the record. I have several concerns
8 after reviewing the tariff which incorporate the
9 settlement. One being that while the Tennessee
10 American Water Company claims in its filing that
11 reducing the rates for the largest industrial customers
12 will encourage expansion and plant activities and water
13 usage, thus encouraging economic growth, no claims are
14 made regarding the sustainability of smaller industrial
15 customers receiving a larger portion of this
16 proportional rate increase during these trying economic
17 times.

18 There is a fine line here, and I do
19 not want to take any action which might serve to force
20 small industrial customers to close their doors. I'm
21 not saying this will happen, just that no facts or
22 assertions have been made to the contrary.

23 Another concern is that the smaller
24 industrial customers may not have been adequately
25 represented on this issue. I am almost certain that if

1 the small industrial customers were fully aware that we
2 are considering allocating a smaller portion of this
3 proportional revenue increase to the large customers to
4 the detriment of the small customers, they would have
5 been knocking on our doors to voice their concerns.

6 Again, no assurances have been provided that the small
7 industrial customers are aware of this possible action.

8 Upon careful review and consideration
9 of the information contained in the record, I vote no
10 to the settlement agreement and move to adopt the
11 tariff to reflect an across-the-board increase to all
12 customer classes and individual rates. That is my
13 motion, and I would so move.

14 DIRECTOR ROBERSON: I second the
15 motion of the chairman with regard to rate design
16 exclusively. So I second your motion.

17 CHAIRMAN FREEMAN: Thank you.

18 Madam Clerk, next docket.

19 MS. DILLON: Next we have 11-00005,
20 Consumer Advocate Division; Consumer Advocate's
21 petition for declaratory order that Berry's Chapel
22 Utility, Inc., is a public utility under Tennessee law
23 and should be regulated by the TRA; consider petition.

24 CHAIRMAN FREEMAN: Director Roberson.

25 DIRECTOR ROBERSON: Thank you, Madam

1 Chair.

2 The Tennessee General Assembly created
3 the TRA and its predecessor, the Public Service
4 Commission, over 100 years ago and delegated to it
5 broad regulatory powers over public utilities and, to a
6 much lesser extent, cooperatives.

7 Over this more than century of public
8 service this agency has developed its expertise and
9 ruled on many issues, many of which have been upheld by
10 the courts. Inherent and necessary in the power to
11 adequately regulate public utilities is the
12 long-accepted ability of the TRA to interpret its
13 statutory definition of a public utility and that of a
14 nonutility as set out in TCA Section 65-4-101(6)(E).

15 I find that the Authority has specific
16 expertise regarding the application of its enabling
17 statutes, and under the doctrine of primary
18 jurisdiction is the correct venue to rule on the
19 Consumer Advocate's petition. Therefore, I find that
20 the Authority has the ability and requisite authority
21 to make the determination as to whether or not Berry's
22 Chapel is a public utility.

23 Would you like to breakdown my motion,
24 each one?

25 DIRECTOR KYLE: Yes.

1 DIRECTOR ROBERSON: And I so move that
2 we have the necessary and the expert ability to rule on
3 the petition.

4 DIRECTOR KYLE: I second and vote yes.

5 CHAIRMAN FREEMAN: I vote aye.

6 DIRECTOR ROBERSON: Number two
7 doesn't -- I don't think requires any action by us. I
8 just want to make this statement for the record.

9 Based on the information provided in
10 its September 17th, 2011 (sic) letter, Berry's Chapel
11 asserts that it is a not-for-profit corporation. The
12 more relevant, however, and appropriate question is one
13 that rests squarely on the shoulders of the TRA, and
14 that is whether the TRA -- is whether Berry's Chapel is
15 a utility or a nonutility according to State statutes.

16 We have given both parties to this
17 case their day in court, and I believe the time is ripe
18 for a decision. In my review of the record of this
19 case, I find that the arguments of the Consumer
20 Advocate are compelling. Therefore, I find that the
21 proper construction of Tennessee Code Annotated
22 Section 65-4-101(6)(E) requires that the word
23 "cooperative" modifies the terms "organization,
24 association, and corporation," and I so move.

25 DIRECTOR KYLE: I would second and

1 vote yes.

2 CHAIRMAN FREEMAN: I vote aye.

3 DIRECTOR ROBERSON: Next, so the above
4 finding of the panel concludes that Berry's Chapel must
5 become a not-for-profit cooperative to become a
6 nonutility. I believe that the existence of a
7 cooperative is contingent upon it having members. A
8 cooperative is an organization created by its members,
9 for its members' benefit, and controlled by its
10 members.

11 The essence of a cooperative is the
12 presence of members' control rather than corporate
13 control. According to the counsel of the utility, no
14 such member structure has been established to date.
15 Therefore, I find that Berry's Chapel does not
16 currently have members and, therefore, cannot be
17 construed to be a cooperative nonprofit organization
18 under TCA Section 65-4-101(6)(E). Berry's Chapel does
19 not meet now or in the past the statutory definition of
20 a nonutility in TCA Section 65-4-101(6)(E), and is,
21 therefore, subject to the jurisdiction of the TRA as a
22 public utility as prescribed by state law, and I so
23 move.

24 DIRECTOR KYLE: Second and vote yes.

25 CHAIRMAN FREEMAN: Vote aye.

1 DIRECTOR ROBERSON: I find that
2 because Berry's Chapel has been determined to be a
3 public utility under the jurisdiction of this Authority
4 it was unauthorized to increase rates on November the
5 1st, 2010 without Authority approval.

6 Now, I do not contend to know whether
7 Berry's Chapel is in need of a rate increase in the
8 magnitude of \$20 per customer, but this I do know, it
9 took the wrong approach when it increased such fees
10 under the erroneous and dubious shelter of being a
11 nonutility. Because Berry's Chapel has no authority to
12 increase rates, I move that the Authority immediately
13 suspend the \$20-per-customer rate charge and direct
14 Berry's Chapel to cease immediately charging or
15 collecting this monthly fee, and I so move.

16 DIRECTOR KYLE: Second and vote yes.

17 CHAIRMAN FREEMAN: Vote aye.

18 DIRECTOR ROBERSON: The last question
19 is what to do with the unauthorized rate increase
20 collected by Berry's Chapel. I move that the Authority
21 open a new docket to address the ramifications from our
22 declaration that Berry's Chapel is a public utility
23 subject to TRA jurisdiction. Issues to be considered
24 in this new docket would include, one, whether Berry's
25 Chapel is entitled to a hearing regarding the \$20 fee

1 increase or whether it should be ordered to refund
2 customers the amount collected since November the 1st,
3 2010.

4 Number two, what, if any, action
5 should this Authority take against Berry's Chapel for
6 violating State statutes enforced by the TRA,
7 including, but not limited to, "A," operating without a
8 CCN pursuant to Tennessee Code Annotated Section
9 65-4-201 since September the 1st, 2010.

10 "B," merging with Lynwood without
11 Authority approval under TCA Section 65-4-112 or
12 Section 65-4-113.

13 And, finally, for illegally increasing
14 rates without the authority -- without authority
15 approval pursuant to TCA Section 65-5-101, and I so
16 move.

17 DIRECTOR KYLE: Second, vote yes.

18 CHAIRMAN FREEMAN: I vote aye.

19 DIRECTOR ROBERSON: I believe that
20 concludes that docket.

21 CHAIRMAN FREEMAN: Madam Clerk.

22 MS. DILLON: Next we have Docket
23 No. 11-00023, CenturyTel of Adamsville; application of
24 CenturyTel of Adamsville, Inc., d/b/a CenturyLink
25 Adamsville to enter price regulation; consider

petition.

CHAIRMAN FREEMAN: Thank you. On February 7th, 2011, CenturyLink Adamsville filed a petition for approval to enter price regulation pursuant to Tennessee Code Annotated Section 65-5-109. The company states that it will comply with all statutes, rules, and regulations applicable to price-regulated companies, including complying with the rate cap for basic local exchange telephone services.

I would move approval of the petition.

DIRECTOR KYLE: Second, vote yes.

DIRECTOR ROBERSON: I vote aye.

MS. DILLON: Miscellaneous business?

CHAIRMAN FREEMAN: None.

MS. DILLON: Next we have Section 5, Directors Hill, Freeman, and Roberson.

Docket No. 10-00043, BellSouth Telecommunications, Inc.; petition for arbitration of interconnection agreement between BellSouth d/b/a AT&T Tennessee and Sprint Communications Company LP; consider joint petition.

CHAIRMAN FREEMAN: Thank you. The Authority accepted the petition for arbitration filed by AT&T Tennessee on March 19th, 2010 in this docket and in Docket No. 10-00042.

1 And based on the record, I would move
2 to grant the joint motion permitting AT&T to withdraw
3 the petition for arbitration without prejudice and that
4 this docket be closed based on the agreement of the
5 parties. I so move.

6 DIRECTOR HILL: I second and vote aye.

7 DIRECTOR ROBERSON: I vote aye.

8 MS. DILLON: Next we have Docket
9 No. 11-00024, CenturyTel of Ooltewah-Collegedale;
10 application of CenturyTel of Ooltewah-Collegedale,
11 Inc., d/b/a CenturyLink Ooltewah-Collegedale to enter
12 price regulation; consider petition.

13 CHAIRMAN FREEMAN: Thank you. On
14 February the 7th, 2011 CenturyLink of
15 Ooltewah-Collegedale filed a petition for approval to
16 enter price regulation pursuant to Tennessee Code
17 Annotated Section 65-5-109. The company states that it
18 will comply with all statutes, rules, and regulations
19 applicable to price-regulated companies, including
20 complying with the rate cap for basic local exchange
21 telephone services.

22 I would move approval of the petition
23 as filed.

24 DIRECTOR HILL: Second and vote aye.

25 DIRECTOR ROBERSON: I vote aye.

1 MS. DILLON: Miscellaneous business?

2 CHAIRMAN FREEMAN: None.

3 I move we adjourn.

4 (Proceedings concluded at
5 1:25 p.m.)

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1 REPORTER'S CERTIFICATE

2 I, Christina M. Rhodes, Licensed Court
3 Reporter, Registered Professional Reporter, Certified
4 Court Reporter, and Notary Public for the State of
5 Tennessee, hereby certify that I reported the foregoing
6 proceedings at the time and place set forth in the
7 caption thereof; that the proceedings were
8 stenographically reported by me; and that the foregoing
9 proceedings constitute a true and correct transcript of
10 said proceedings to the best of my ability.

11 I FURTHER CERTIFY that I am not
12 related to any of the parties named herein, nor their
13 counsel, and have no interest, financial or otherwise,
14 in the outcome or events of this action.

15 IN WITNESS WHEREOF, I have hereunto
16 affixed my official signature and seal of office this
17 20th day of April, 2011.

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21
22 CHRISTINA M. RHODES, LCR, RPR, CCR
23 AND NOTARY PUBLIC FOR THE STATE
24 OF TENNESSEE

25 LCR No. 166, Expires 6/30/2012

Notary Commission Expires 11/4/13

Minutes of the Authority Conference of
Monday, April 19th, 2011, stand approved.

CHAIRMAN MARY W. FREEMAN

DIRECTOR EDDIE ROBERSON

DIRECTOR KENNETH C. HILL

DIRECTOR SARA KYLE