

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	filed electronically in the
)	docket room on 12/03/12
APPLICATION OF BRISTOL TENNESSEE)	
ESSENTIAL SERVICES TO EXPAND ITS)	Docket No. 12-00060
CERTIFICATE OF CONVENIENCE AND)	
NECESSITY TO PROVIDE COMPETING)	
TELECOMMUNICATIONS SERVICES STATEWIDE)	

**TENNESSEE CABLE TELECOMMUNICATIONS ASSOCIATION'S
REPLY BRIEF REGARDING JURISDICTION OF THE
TENNESSEE REGULATORY AUTHORITY**

COMES NOW Tennessee Cable Telecommunications Association ("TCTA"), by and through its undersigned counsel, and hereby files its reply brief regarding the threshold legal issues relating to the extent of the Tennessee Regulatory Authority's ("TRA") jurisdiction in this matter.

ISSUE

The threshold legal issue in this matter relates to the TRA's jurisdiction regarding competition issues, including cross-subsidization, as set forth in Tenn. Code Ann. § 7-52-401, *et. seq.* In short, Bristol Tennessee Essential Services ("BTES") asserts that the TRA has no jurisdiction over such issues, since it has elected to operate under market regulation, while TCTA maintains that the TRA must retain jurisdiction to consider all issues relating to potential anti-competition issues relating to a municipal electric company, regardless of whether it elects to operate under market regulation.

ARGUMENT

In its Application filed in this matter, BTES seeks to modify the Certificate of Public Convenience and Necessity previously granted to it by the TRA. As such, BTES does not seek to create a new entity, but rather seeks expansion of the TRA's 2006 Order granting its CCN. That Order specifically provides that BTES's original Application was subject to the requirements of Title 7 relating to municipal electric companies. Nothing has changed since then that would require the TRA to revise or modify that 2006 Order, because the requirements of Title 7 still exist and have not been modified or repealed by any other section of the Tennessee Code. Specifically, the Market Regulation Act did not repeal the requirements applicable to municipal electric companies where the TRA is exercising CCN authority. As part of that ongoing authority, Tenn. Code Ann. § 7-52-401 provides for TRA review of potential anti-competitive practices by entities such as BTES "[n]otwithstanding § 65-4-101(6)(B) or any other provision of this code. . . ." As such, the TRA's jurisdiction over these issues is specifically preserved, regardless of whether or not the Market Regulation Act makes reference to those issues. Had the General Assembly intended to remove such jurisdiction, it would have specifically done so. Instead, the Market Regulation Act remains silent on the matter (as opposed to its attention in § 65-5-109(n) to specific regulatory items otherwise conveyed by Title 65). As such, the TRA has no more or less jurisdiction in relation to Title 7 than it had prior to passage of the Market Regulation Act

Moreover, the 2006 Order is contractual in nature, as well as quasi-legislative-rule making, and constitutes the judicial resolution of an issue previously considered and determined. Article I, Section 10 of the U.S. Constitution and Article I, Section 20 of the Tennessee State Constitution both prohibit a legislative body from adopting an ex post facto law; which is a retrospective law which "from a legal standpoint, . . . take[s] away or impair[s] vested rights acquired under existing laws or create[s] a new obligation, impose[s] a new duty, or attach a new disability in respect of

transactions or considerations already passed.” Morris v. Gross, 572 S.W. 2nd 902 (Tenn. 1978).

CONCLUSION

As set forth above, the TRA retains its jurisdiction over application of the Title 7 provisions relating to potential anti-competitive issues relating to BTES’s application for modifying and expanding its CCN for telecommunications services.

Respectfully submitted,

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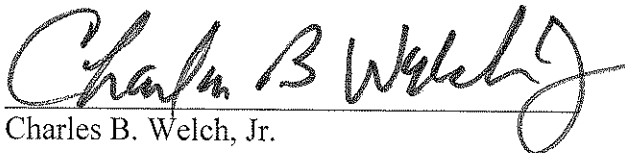
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct electronic copy has been forwarded via e-mail to the following on this the 3rd day of December, 2012.

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