

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 19, 2012

IN RE:

**APPLICATION OF BRISTOL TENNESSEE ESSENTIAL
SERVICES FOR EXPANDED CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
COMPETING TELECOMMUNICATIONS SERVICES
STATEWIDE**

)
)
) **DOCKET NO.**
) **12-00060**
)
)
)

**ORDER GRANTING MOTION TO ENFORCE COMPLIANCE WITH ORDER
REQUIRING PRODUCTION OF AUDITOR WORKPAPERS**

This matter is before the Hearing Officer of the Tennessee Regulatory Authority (“TRA” or the “Authority”) upon a *CenturyLink Motion to Enforce Compliance with Hearing Officer Order Regarding Production of Auditor Workpapers (“Enforcement Motion”)* filed in the docket on December 18, 2012.

In its *Enforcement Motion*, United Telephone-Southeast LLC d/b/a CenturyLink, CenturyLink of Adamsville, Inc. d/b/a CenturyLink Adamsville, CenturyTel of Claiborne, Inc. d/b/a CenturyLink Claiborne, and CenturyTel of Ooltewah-Collegedale, Inc. d/b/a CenturyLink Ooltewah-Collegedale (collectively, “CenturyLink”) states that the 2010 Cost Allocation Manual (“CAM”) auditor workpapers produced by BTES on November 26, 2012, are substantially incomplete, having omitted multiple alphabetically-designated sections in their entirety and “at least 200 missing page numbers” from remaining portions actually produced.¹

¹ *Enforcement Motion*, p. 2-3 (December 18, 2012) (providing an extensive listing of pages missing from sections actually produced by BTES to CenturyLink).

Attached with its motion, CenturyLink provided a string of emails exchanged between the counsels for the parties dating from November 20, 2012 to December 17, 2012, concerning the substance and deficiency of the workpapers. Therein, BTES asserts that it “produced the 2010 CAM audit workpapers that BTES has in its possession.”² Even so, it is the final email exchange provided by counsel for BTES that is particularly noteworthy. In its December 17, 2012 email, BTES refuses CenturyLink’s request that BTES obtain and produce a complete copy of the auditor’s workpapers and asserts that the Hearing Officer’s Order is limited and only requires production of whatever of the 2010 auditor workpapers it has in its current possession:

... BTES has considered this further. Ordering clause 2 of the Hearing Officer’s order requires BTES to “supplement its discovery responses and produce the 2010 CAM compliance auditor’s workpapers, which are currently in its [BTES’] possession.” BTES has produced what it has, so as I see it, BTES has complied with the order.³

BTES’ assertion that the Hearing Officer restricted production of the auditor workpapers to whatever happens to be in BTES’ possession is erroneous, and considering the extensive discussion of this matter during the November 15, 2012 status conference, the apparent misconstruing of the Hearing Officer’s verbal ruling and language in the Order issued subsequently, could appear disingenuous.

During a status conference held on November 15, 2012, BTES was ordered to produce the auditor workpapers associated with the 2010 audit of its CAM in response to an adverse ruling of the Hearing Officer on CenturyLink’s Motion to Compel, which is memorialized in the *Order Granting CenturyLink’s Motion to Compel* entered on November 20, 2012. During the lengthy discussion related to discovery of the workpapers, the Hearing Officer asked BTES

² *Id.* at attachment, p. 2 (email exchange from Mark W. Smith, counsel for BTES, to Sue Benedek, counsel for CenturyLink, dated December 13, 2012).

³ *Id.* at attachment, p. 1 (email exchange from Mark W. Smith, counsel for BTES, to Sue Benedek, counsel for CenturyLink, dated December 17, 2012).

whether, in fact, it had the auditor workpapers in its possession. In response, BTES stated, unequivocally, that it did have the workpapers in its possession.⁴ Neither during the status conference, nor anytime thereafter, did BTES amend or qualify its statement to indicate that it had anything other than a full and complete copy of the workpapers at issue. Further, as related to the 2011 audit workpapers, also requested by CenturyLink, BTES stated that it did not obtain an audit for that time period and neither did it intend to do so, despite the possibility that failure to do so might be considered a violation of the conditions under which its Certificate of Public Convenience and Necessity had been approved.⁵

Furthermore, not less than three times in the body of the *Order Granting CenturyLink's Motion to Compel*, the Hearing Officer noted that BTES had admitted that the 2010 auditor workpapers were in its possession, custody and control.⁶ Thereafter, the ordering clauses grant CenturyLink's motion, limited to its request concerning the 2010 CAM auditor workpapers due to BTES' failure to obtain a 2011 audit. Further, the second ordering clause directed BTES to produce the 2010 workpapers by November 20, 2012, and interjected yet another reference that such workpapers were already in BTES' possession. Based on BTES' unqualified admission of possession, it is unreasonable to interpret, or misinterpret, the language of the second ordering clause as limiting or otherwise restricting the directive to produce the workpapers.

Therefore, the Hearing Officer orders BTES to obtain and produce the complete and unredacted auditor workpapers associated with its 2010 CAM compliance audit. If for whatever reason, BTES does not currently have in its possession a complete and unredacted copy of the workpapers, it is further ordered to obtain such a copy from the auditor that it engaged to perform the audit. In the event that BTES further fails to produce the 2010 auditor workpapers,

⁴ Transcript of Proceedings, p. 15, lines 2-4 (November 15, 2012).

⁵ Id. at lines 5-22.

⁶ *Order Granting CenturyLink's Motion to Compel*, pp. 6, 8, and 9 (November 20, 2012).

as directed previously and clarified herein, upon further order BTES may also be required to produce workpapers associated with earlier audits, as requested in the *Enforcement Order*, and may be subject to penalties under Tenn. Code Ann. § 65-4-120 for violation of the Authority's rulings and Orders dating from the first day of noncompliance, November 21, 2012,⁷ and the imposition of any other appropriate civil penalties and sanctions. Finally, the Hearing Officer defers consideration of CenturyLink's request for amendment of the procedural schedule pending satisfactory production of the auditor workpapers, as ordered, if necessary.

IT IS THEREFORE ORDERED THAT:

1. *CenturyLink Motion to Enforce Compliance with Hearing Officer Order Regarding Production of Auditor Workpapers*, insofar as it seeks a complete and unredacted copy of the auditor workpapers associated with the 2010 audit of Bristol Tennessee Essential Services' compliance with its Cost Allocation Manual, is GRANTED.

2. Bristol Tennessee Essential Services shall obtain and produce a complete and unredacted copy of the auditor workpapers associated with its 2010 Cost Allocation Manual compliance audit **no later than five (5) business days from entry of this Order, or December 28, 2012, whichever is earlier.**


Kelly Cashman-Grams, Hearing Officer

⁷ Tenn. Code Ann. § 65-4-120 specifically empowers the TRA to seek penalties for violations of its orders and rulings.