

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

In Re:)	
Application of Bristol Tennessee Essential Services)	Docket No. 12-00060
To Expand Its Certificate of Convenience and)	
Necessity to Provide Competing)	
Telecommunications Services Statewide)	

**CENTURYLINK REQUEST FOR STATUS CONFERENCE
WITH HEARING OFFICER**

Intervenor CenturyLink¹ hereby requests a status conference with the Hearing Officer. Despite two separate Orders, petitioner Bristol Tennessee Essential Services ("BTES") has still failed to produce a complete copy of the auditor workpapers for its most recent 2010 Cost Allocation Manual ("CAM") audit.

BTES was originally ordered to produce the workpapers during a November 15, 2012 status conference on CenturyLink's motion to compel. In granting the motion to compel, the Hearing specifically found the auditor workpapers relevant to BTES' application for a statewide CCN, specifically, whether BTES has sufficiently demonstrated that it has and will continue to comply with the Authority's rules, policies and orders:

Finally, as BTES has placed its prior financial reports at issue in this docket and the compliance audits are required to be conducted pursuant to the Authority's [2006] Order granting BTES' CCN, the workpapers associated with the compliance audits are relevant to these proceedings and to the Authority's considerations under Tenn. Code Ann. § 65-4-201.

(Nov. 20 Order, p. 9.)

¹ The CenturyLink intervenors are United Telephone Southeast LLC d/b/a CenturyLink, CenturyTel 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").

When CenturyLink reviewed BTES' production, it noted the workpapers were substantially incomplete. For example, the workpapers are numbered A to Z, but BTES did not produce any of the papers for sections G, M, N, O, P, Q, T, U, V, X, or Y, even though other documents BTES produced reference those missing sections. The sections BTES did produce were also obviously incomplete; CenturyLink noted references to at least 200 missing page numbers, including the following:

Pages A-1-2.00 through A-1-2.09
Pages A-1-3.00 through A-1-3.09
Pages A-1-4.00 through A-1.4.09
Page A-1-5.00
Page B-1.2.00
Page B-1.3.00
Page B-1.400
Page B-1-5.00
Page C-1-2.00
Page C-1-3.00
Pages C-1-4.00 and C-1-4.01
Pages D-1-1.05A through D-1-1.05L
Page D-1-2.00
Page D-1-3.00
Page D-1-4.00
Page D-1-5.00
Pages E-1-2.00 through E-1-2.12
Pages E-1-3.00 through E-1-3.11
Pages E-1-4.00 through E-1-4.12
Pages E-1-5.00 through E-1-5.12
Pages F-1-2.00 through F-1-2.14
Pages F-1-3.00 through F-1-3.14
Pages F-1-4.00 through F-1-4.11
Pages F-1-5.00 through F-1-5.13
Pages G-1-1.00 through G-1-1.04
Pages H-1-2.00 through H-1-2.04
Pages H-1-3.00 through H-1-3.04
Pages H-1-4.00 through H-1-4.04
Pages H-1-5.00 through H-1.5.04
Page I-1-2.00
Page J-1-1.01
Pages K-2-1.01 through K-2-1.09
Page L-1-1.01

Page S-1-1.15
Page W-28-1.00
Page W-29-1.00
Page W-30-1.00
Pages W-30-3.01 through W-30-3.09
Page W-30-4.01
Page W-30-5.00
Page W-30-6.00
Pages Z-5-1.00 through Z-5-4.00

CenturyLink notified BTES of the incomplete and missing information and requested BTES provide a complete copy of the 2010 audit workpapers. BTES responded that it did not have a complete set of the workpapers in its possession. When CenturyLink requested that BTES obtain a complete set from its auditors, BTES refused, claiming its only obligation was to produce whatever papers it had in its possession. CenturyLink was forced to file a motion to enforce compliance with the Hearing Officer's November 20 Order.


The Hearing Officer granted this motion to enforce on December 19, 2012. In this ruling, the Hearing Officer disagreed with BTES' position that it was only required to produce whatever it had in its possession, noting that "considering the extensive discussion of this matter during the November 15, 2012 status conference, [BTES'] apparent misconstruing of the Hearing Officer's verbal ruling and language in the Order issue subsequently, could appear disingenuous." (Dec. 19, 2012 Order, p. 2.) The Hearing Officer ordered BTES to produce the "complete and unredacted auditor workpapers" for the 2010 CAM audit no later than December 28, 2012. The Hearing Officer ruled that if BTES failed to produce the 2010 workpapers, "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,

and the imposition of any other appropriate civil penalties and sanctions." (Dec. 19, 2012 Order, pp. 3-4.)

As reflected in the attached correspondence, BTES has still yet to produce any of the missing schedules or pages for the 2010 auditor workpapers. As a result, CenturyLink is wholly unable to conduct a meaningful review of the audit or the workpapers. CenturyLink requests a status conference with the Hearing Officer to discuss appropriate consequences for BTES' continued failure to comply with the Hearing Officer's orders and refusal to produce even the most basic information in support of its Petition.

In light of BTES' acknowledged past miscommunications and misunderstandings regarding its ability and willingness to produce this information, as well as the seriousness of the matters at issue, CenturyLink requests that BTES be required to have a client representative present at the status conference that is knowledgeable about the issues to be discussed to answer any questions the Hearing Officer may have. CenturyLink has had multiple knowledgeable client representatives available both in person and by phone at every status conference thus far. BTES, as the petitioning party, should accord the proceedings the same amount of attention and respect and have a representative present as well.

Respectfully submitted this 8th day of January, 2012.



Misty Smith Kelley, TN BFR 019450
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct electronic copy of this response has been forwarded via electronic mail to the following on this the 8th day of January, 2012.

Mark W. Smith
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Charles B. Welch, Jr.
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Misty Smith Kelley

Kelley, Misty Smith

From: Benedek, Sue E <Sue.Benedek@centurylink.com>
Sent: Tuesday, January 08, 2013 3:11 PM
To: 'Mark Smith'
Cc: Kelley, Misty Smith
Subject: RE: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

Mark: Thanks for honoring the request for a written response from BTES. Unfortunately, as I've discussed with you on several occasions since BTES's 12/28/2012 response to the Hearing Officer, an insurmountable disagreement exists between BTES and CenturyLink.

From the very beginning, BTES has relied upon its financial reports and audits to support its CCN request. When CenturyLink quite reasonably asked for the back-up information to verify BTES's statements, BTES objected, claiming the requests were overly burdensome and the information was not relevant and beyond the TRA's purview. BTES's relevancy objections have been unequivocally rejected by both the Hearing Officer, and the TRA panel itself; there is now no question the information CenturyLink seeks is highly relevant. In a show of good faith, CenturyLink voluntarily agreed to limit its discovery request from 5 years of audit information to one year, with the understanding that BTES would produce a complete copy of the most recent audit and supporting auditor workpapers. After many months, two separate rulings from the Hearing Officer, and one from the TRA panel, we are still in the same position: CenturyLink is not able to review and verify a complete copy of BTES's most recent audit (year 2010) and the supporting auditor workpapers. The "options" offered by BTES in your e-mail merely allow BTES to take the position that it has complied with the letter, if not the spirit of the Hearing Examiner's order – those options do not resolve the core issue: BTES's refusal to produce a complete copy of the auditor workpapers which in turn has prevented CenturyLink from conducting a meaningful review of the information. The e-mail options you have offered merely suggest that since BTES cannot produce a complete copy of the 2010 auditor workpapers, BTES will instead produce the underlying information and CenturyLink will have the burden of either undertaking an audit itself or paying for Mr. Novak to do so. These so-called "options" are unacceptable.

While the context of this issue arose as a discovery matter, the insurmountable issue between our respective clients now becomes legal in nature and impacts the ultimate burden of proof that squarely rests with BTES – and not my client. Each of your suggested options shifts the burden of production – and the burden of proof – to my client. Your continued insistence that BTES has provided a complete copy of the auditor workpapers appears to be pure semantics. Even if neither BTES or its auditor presently have the ability to access a complete copy of its most recent auditor workpapers (which, given modern electronic communication and retrieval methods, seems highly unlikely), there is no question that a complete copy must have existed at or near the time the audit was prepared and submitted to BTES. Attempting to separately classify portions of the auditor workpapers as auditor-prepared or client source documents is nonsensical – when the auditor took BTES/client source documents, re-numbered them as schedules to his workpapers, and relied upon them for his conclusions, those source documents became part of the workpapers.

In our view, BTES appears to want it both ways: BTES wants to argue that it complied with the Hearing Officer's Order (and thus has met its burden regarding the Order) and BTES wants to avoid the risks of its chosen litigation strategy. The options you have offered result in CenturyLink either having to painstakingly recreate, or entirely redo, the 2010 audit. We are not interested in doing either. Only the Hearing Officer can determine if BTES is compliant with the Hearing Officer's Order. Our respective clients clearly disagree on this point. Each of your options presumes that BTES has complied with the Order. Only the Hearing Officer can determine the legal import of BTES's failure to comply. BTES certainly can choose a litigation strategy that espouses it cannot find documents or that BTES is unwilling to recreate the auditor workpapers. However, BTES cannot foist upon another litigant the risks of BTES's litigation choices. Only the Hearing Officer can determine if the lack of information provided by BTES is sufficient to warrant dismissal of BTES's CCN request or otherwise to focus the procedural schedule and evidentiary requirements upon the issue of addressing appropriate conditions and/or sanctions.

I truly believe after these past couple weeks that my client has tried in good faith to resolve this issue with BTES. We have considered each option offered by BTES. However, because BTES maintains compliance with the Hearing Officer's Order but refuses to provide a complete copy of the auditor workpapers, it is CenturyLink's position that we have an insurmountable legal problem. CenturyLink maintains that the litigation strategy taken by BTES merits dismissal of BTES's CCN request. The incomplete workpapers provided do not enable CenturyLink or the fact finder to make sufficient findings and conclusions supported by substantial evidence in support of BTES's CCN request.

Misty will be requesting a status conference with the Hearing Officer. Given the past miscommunications and misunderstandings between BTES and the Hearing Officer and the extreme difficulty CenturyLink has encountered in extracting this clearly relevant information from BTES, we will continue to insist that BTES have a knowledgeable client representative present at the status conference. CenturyLink has had multiple knowledgeable client representatives available both in person and by phone at every status conference thus far. BTES, as the petitioning party, should accord the proceedings the same amount of attention and respect and have a representative present as well.

We have tried for weeks and clearly fundamentally disagree. Only the Hearing Officer can resolve and fashion next steps. Thanks for trying and all the effort put forth by you. Sue.

Sue Benedek
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From: Mark Smith [mailto:msmith@millermartin.com]
Sent: Monday, January 07, 2013 4:08 PM
To: Benedek, Sue E
Cc: 'Kelley, Misty Smith'
Subject: RE: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

Sue – thank you for taking time over the past several days to discuss this issue. I continue to believe that this is an issue that we should be able to work through together.

At the outset, I want to be clear about two key issues. First, as I understand it, there is an important distinction between Mr. Novak's workpapers and the BTES documents that he reviewed in the course of preparing his workpapers. As explained in Mr. Novak's affidavit, the workpapers attached to his December 28, 2010 email are the complete workpapers. The other references are to BTES documents that Mr. Novak reviewed as part of preparing his workpapers. Mr. Novak did not modify those documents other than to assign them index numbering. The records that BTES provided to Mr. Novak are available. It is simply his indexed compilation of BTES documents that no longer exists. Mr. Novak did not provide BTES with this compilation. Second, because the indexed compilation does not exist any longer, there is no compilation of documents to be produced.

In an effort to move this forward, BTES voluntarily made two offers to provide BTES financial information relating to the 2010 CAM audit: (1) copies of BTES' financial records that BTES furnished to Mr. Novak in connection with the 2010 CAM audit; or (2) compilations of BTES' financial records related to calculations in Mr. Novak's workpapers as CenturyLink requests.

After hearing your concerns about the two initial proposals, I came up with two more compromise proposals for you to consider: (3) having BTES prepare a compilation of the allocator calculations that it provided to Mr. Novak and making available such other financial records that BTES provided to him as CenturyLink requests; or (4) having BTES retain Mr. Novak to recreate the indexed compilation (estimated to be 10 hours or less) at CenturyLink's expense.

I think that option (3) might be helpful, as it would provide a compilation of BTES' calculations of the various allocation factors that are presented in the workpapers. If your client is interested in exploring option (3) further, I am willing to obtain a sample compilation for you to review. I've not yet obtained a sample, as on further reflection, I thought that it might be most helpful for your client to identify a calculation of particular interest in order to evaluate this information further.

I understand that you are not leaning towards option (4), but I would ask that you reconsider this if the first three options are not acceptable to your client. I gather that the only objection here is with the proposal that CenturyLink bear the costs of this work. I believe that CenturyLink would ordinarily bear the cost of Mr. Novak's time in formal discovery, so I think it is fair to request CenturyLink to bear that cost here. Hopefully, an informal approach like the one I have suggested would both expedite the process and lower the costs, so I would ask that you reconsider it if the other three options are not acceptable to your client.

I believe that I have put forward four different good faith approaches to move this forward. With each proposal, BTES would continue to redact employee identifying information in the compensation records and calculations. I've also indicated that we will provide a reasonable extension of the procedural schedule to permit CenturyLink to review these materials. If you and Misty think that I have missed something legally or factually in the recent orders, please let me know. Otherwise, I would appreciate it if you would explore these options with your client to see if any of them might address this issue.

In terms of a status conference, if we cannot work through this as I hope we can, then I will work with you to jointly request an informal status conference among the lawyers to discuss what, if any, further discovery is necessary as part of CenturyLink's review of the 2010 CAM audit workpapers.

I will be in Nashville for the next two days, but will be available to discuss this further by cell phone (423-364-2221).

Thanks and regards-- Mark

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Miller & Martin PLLC

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From: Benedek, Sue E [<mailto:Sue.Benedek@centurylink.com>]
Sent: Wednesday, January 02, 2013 5:31 PM
To: Mark Smith
Cc: 'Kelley, Misty Smith'; 'Charles Welch (CWelch@farrismathews.com)'; Benedek, Sue E
Subject: RE: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

Mark:

As discussed with you today, I now have had the opportunity to discuss BTES's pleading with my client. CenturyLink seeks the ability to review and to verify a complete copy of the auditor workpapers. As noted in my prior email and the Hearing Officer's order, there are numerous schedules/documents referenced and set forth in the auditor workpapers which appear to be missing from the workpapers provided by BTES. Sifting through a potentially voluminous group of documents that BTES now claims are "source documents" allegedly in support of these schedules/documents is unreasonable, burdensome, and creates concerns regarding development of testimony and an evidentiary record. Similarly, "source information documents related to specific allocation calculations" (BTES pleading at p. 2) as CenturyLink may be able to identify further side-steps the evidentiary and discovery processes and remains a non-option. Given the electronic exchange of information between Mr. Novak and BTES, we find it hard to believe that the missing schedules/documents as referenced in the workpapers are not retrievable. Accordingly, it remains CenturyLink's position that BTES's obligation is either to produce those schedules/documents (in original format) or recreate those schedules/documents referenced in the workpapers so that a complete copy of the auditor workpapers is promptly provided by BTES.

Moreover, as we discussed, rather than go back and forth in pleadings CenturyLink suggests an in-person status conference with the Hearing Officer at which BTES will make available knowledgeable BTES employees and Mr. Novak. Please confirm with your client and advise ASAP if BTES agrees to such an in-person status conference.

A change in the due date (currently 1/28/2013) for pre-filed intervenor testimony will be needed. I'm copying Misty, along with Mr. Welch, counsel for the cable association, to help facilitate the exchange of information regarding availabilities for an in-person status conference and new testimony due dates.

Please feel free to call Misty or me if you have any questions.

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From: Mark Smith [<mailto:msmith@millermartin.com>]
Sent: Friday, December 28, 2012 10:40 AM
To: Benedek, Sue E
Subject: RE: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

Sue – that will be fine; I'll be happy to discuss this further. I'll be in my office at 2:00. Thanks-- Mark

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From: Benedek, Sue E [<mailto:Sue.Benedek@centurylink.com>]
Sent: Friday, December 28, 2012 10:35 AM
To: Mark Smith
Cc: Benedek, Sue E
Subject: RE: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

Mark: I would like to call you today. I am unclear about certain statements in the filing and before anything else happens, need you to clarify. Are you available at 2:00 eastern today?

From: Mark Smith [msmith@millermartin.com]
Sent: Friday, December 28, 2012 8:41 AM
To: Benedek, Sue E
Subject: RE: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

Hi Sue – I just left you a voice mail. No need to call me back today. I just wanted to touch base with you after making this filing.

Hope your holidays are going well. Perhaps we could talk sometime next week once you get back in the office.

Thanks-- Mark

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From: Benedek, Sue E [<mailto:Sue.Benedek@centurylink.com>]

Sent: Friday, December 28, 2012 9:34 AM

To: Mark Smith

Subject: Automatic reply: Docket No. 12-00060 (Third Supplemental Response of BTES) [M&M-Content.15518.0001]

I will be out of the office from 12/24/2012 through and including 12/28/2012. If you need immediate attention, please state as such in your email. I will be checking my emails. Happy Holidays.