

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

IN RE:)	*filed electronically in the
)	docket office on 01/11/2013
APPLICATION OF BRISTOL)	
TENNESSEE ESSENTIAL SERVICES)	
TO EXPAND ITS CERTIFICATE OF)	Docket No. 12-00060
CONVENIENCE AND NECESSITY TO)	
PROVIDE COMPETING)	
TELECOMMUNICATIONS SERVICES)	
STATEWIDE)	

**RESPONSE OF BRISTOL TENNESSEE ESSENTIAL SERVICES TO
REQUEST OF UNITED TELEPHONE SOUTHEAST LLC FOR A STATUS
CONFERENCE**

In response to the January 8 *CenturyLink Request for Status Conference with Hearing Officer* (“*Status Conference Request*”), Bristol Tennessee Essential Services (“BTES”) submits that it has clearly complied with the requirements of the *Order Granting Motion to Enforce Compliance with Order Requiring Production of Auditor Workpapers* (the “*Enforcement Order*”). BTES submits that it has also – voluntarily and in good faith – gone much further than required under the *Enforcement Order* in proactively proposing four separate options to CenturyLink to produce any BTES documentation that CenturyLink believes is necessary to evaluate the December 28, 2010 cost allocation manual report of WHN Consulting (the “2010 CAM Audit Report”) – a report that found BTES in material compliance with the cost allocation methodology described in BTES’ cost allocation manual.¹

BTES does not oppose a reasonable extension of the procedural schedule to allow CenturyLink sufficient time to pursue one of these options, but BTES strongly disagrees with

¹ As indicated in paragraph 4 of the *Affidavit of William H. Novak, CPA* (the “*Novak Affidavit*”), the 2010 CAM Audit Report contained this summary conclusion on page 9: “The \$34,893 in recommended net adjusting entries is immaterial in comparison to the total expenses allocated. In our opinion, [BTES] is in material compliance with the allocation methodology described in the CAM for the twelve months ended June 30, 2010.”

any suggestion that it has not complied with the *Enforcement Order*. BTES respectfully requests that the Hearing Officer deny any further requests of CenturyLink under the *Status Conference Request* for additional relief.

For two separate and independently sufficient reasons, BTES has complied with the *Enforcement Order*. First, as indicated in the *Novak Affidavit*, except for the redaction of employee names from workpapers listing employee specific compensation information, BTES has already submitted the “complete set of workpapers for the 2010 CAM Audit.” *Novak Affidavit*, ¶ 4. The remaining documents are references to BTES’ own documents that Mr. Novak collected and to which he assigned workpaper numbering as a reference in his own workpapers. *Novak Affidavit*, ¶ 5. In other words, the remaining documents that CenturyLink seeks are not Mr. Novak’s workpapers but were instead a compilation of documents and calculations that he received from BTES. Because BTES has submitted Mr. Novak’s workpapers, it has complied with the *Enforcement Order*.

Second, Mr. Novak’s indexed compilation of BTES’ documents no longer exists, and Mr. Novak never provided it to BTES. Mr. Novak disposed of his copies of the BTES documents after his audit engagement was completed. *Novak Affidavit*, ¶ 7. BTES, therefore, does not have the indexed compilation. The *Enforcement Order* does not and could not extend to a compilation of documents that no longer exists: “A document or thing is not in the possession, custody or control of a party if it does not exist. Production cannot be required of a document no longer in existence” Wright, Miller & Marcus, *Federal Practice and Procedure*, Section 2210 at p. 167 (2010). In other words, BTES has produced what was required by the *Enforcement Order*. Mr. Novak’s compilation of the other BTES documents no longer exists and, therefore,

cannot be produced even if it were a workpaper subject to the *Enforcement Order* (a point that BTES strongly disputes).

As Mr. Novak noted in his affidavit, although his indexed set of BTES documents no longer exists, the BTES documents themselves should be available from BTES, albeit without Mr. Novak's index numbering. *Novak Affidavit*, ¶ 8. Even though BTES concluded that it had complied with the requirements of the *Enforcement Order*, in an effort to forestall a further discovery issue and, in hopes of completing CenturyLink's review of the 2010 CAM Audit Report, BTES voluntarily offered to make available to CenturyLink copies of all documents that BTES furnished to Mr. Novak in connection with the 2010 CAM Audit Report.² *Third Supplemental Responses of Bristol Tennessee Essential Services to Discovery Requests of United Telephone Southeast LLC* at p. 2. In the event that the first offer provided too much information to CenturyLink, BTES also alternatively volunteered to make available compilations of its documents related to specific allocation calculations in Mr. Novak's workpapers as might be requested by CenturyLink. *Id.* at p. 2. Each of these offers was a good faith offer to voluntarily provide more than the *Enforcement Order* required. CenturyLink rejected both of them.

As reflected in the correspondence attached to CenturyLink's *Status Conference Request*, when CenturyLink rejected both of these reasonable offers, BTES made two more offers for CenturyLink to consider. As a third option, BTES offered to provide a compilation of BTES' allocator calculation information that BTES provided to Mr. Novak during the 2010 CAM Audit and would then make available additional supporting BTES documents as CenturyLink might request. This third option would provide CenturyLink with a discrete subset of the documents that BTES initially offered. These documents would provide details of various BTES allocator

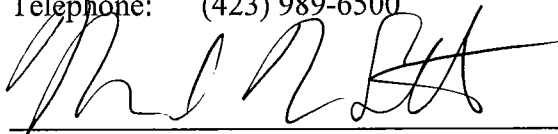
² BTES has made each of the offers discussed in this response subject to its ability to redact personally identifying information from its employee compensation records, which is a request that CenturyLink counsel has previously accommodated.

calculations that were provided to Mr. Novak, and BTES would also make available other BTES financial information to CenturyLink as requested. As a fourth option, BTES also volunteered to request Mr. Novak to re-create an indexed compilation of BTES documents, provided that CenturyLink paid the costs of Mr. Novak doing so. CenturyLink rejected both of these offers as well.

BTES submits that it has complied with the requirements of the *Enforcement Order* and, in an effort to facilitate the completion of CenturyLink's review of the 2010 CAM Audit Report, has gone well beyond the requirements of the *Enforcement Order* to try to facilitate the orderly completion of this proceeding. BTES has voluntarily and in good faith put forth four independently sufficient options to allow CenturyLink to finish its review of the 2010 CAM Audit Report. BTES respectfully requests that the Hearing Officer find that these options are more than is required under the *Enforcement Order* and reject CenturyLink's requests for any further relief at the upcoming status conference.

Respectfully submitted,

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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 11th day of January, 2013.

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