

**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 Competiting )  
Telecommunications Services Statewide )

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**CENTURYLINK RESPONSE  
TO MOTION FOR PARTIAL RECONSIDERATION OF FEBRUARY 13, 2013 ORDER  
AND PARTIAL MOTION FOR STAY**

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Intervenor CenturyLink<sup>1</sup> hereby files this Response to the Motion for Partial Reconsideration regarding the Hearing Officer's February 13, 2013 Order ("February 13 Order")<sup>2</sup> and the Partial Motion to Stay filed by Bristol Tennessee Essential Services (hereinafter "BTES") on February 20, 2013.

**INTRODUCTION**

The Hearing Officer's February 13 Order represents the third time BTES has been ordered to produce the results of the annual audits BTES is required to conduct and submit to the TRA under the terms of its existing telecommunications certificate. CenturyLink originally requested this audit information in September 2012 in order to verify BTES's assertion that it has fully complied with all requirements of its current certificate. In November 2012, the Hearing Officer specifically found that the audit information is relevant and must be produced.<sup>3</sup> In December 2012, in response to BTES's protest that it no longer had certain audit workpapers in its possession, the Hearing Officer ordered BTES to obtain a complete copy of the

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<sup>1</sup> 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").

<sup>2</sup> Order Requiring Production of 2010 Audit Workpapers Including Auditor's Indexed Compliance of BTES Documents & Requiring BTES Obtain 2011 CAM Compliance Audit.

<sup>3</sup> November 20, 2012 Order.

workpapers from its auditor.<sup>4</sup> When BTES responded that the workpapers had been destroyed, the Hearing Officer convened a status conference on January 29, 2013. At the status conference, the Hearing Officer ruled that under its existing telecommunications certificate, BTES is required to both conduct an annual compliance audit, and to submit the audit records to the TRA in a format that permits the TRA to audit and review them. Because the destroyed workpapers are necessary for a thorough review of the audit, the Hearing Officer ordered BTES to engage its auditor to recreate the workpapers and produce the recreation in response to the discovery requests in this case.<sup>5</sup>

During the course of these discovery proceedings, the parties requested and received a ruling from the TRA panel on a threshold legal issue raised by BTES. At the TRA's regular January 7 agenda conference, the panel unanimously ruled that the 2009 Market Regulation Act (Tenn. Code Ann. § 65-5-109) did not strip the TRA of the jurisdiction to impose and enforce certificate conditions to prevent anti-competitive behavior like the illegal cross-subsidies prohibited by the municipal electric law, Tenn. Code Ann. § 7-52-402. Consistent with this ruling, the Hearing Officer's February 13 Order also directed BTES to take prompt action to comply with the requirements of its existing certificate by completing and filing the audits for 2011 and future years going forward.<sup>6</sup>

BTES requests that the Hearing Officer reconsider and stay portions of the February 13, 2013 Order until such time as BTES seeks reconsideration or appeals the January 7, 2013 panel decision confirming that the Authority has jurisdiction to consider and enforce BTES's compliance with the conditions of its existing telecommunications certificate and the

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<sup>4</sup> December 19, 2012 Order.

<sup>5</sup> February 13, 2013 Order.

<sup>6</sup> *Id.*

requirements set forth in the Tennessee municipal electric law, Tenn. Code Ann. § 7-52-401, *et. seq.*<sup>7</sup> BTES further requests, in the event of reconsideration or further appeal of the panel's January 7, 2013 decision, the Hearing Officer further stay those portions of the February 13 Order "until such time as the reconsideration or appellate process is complete..."<sup>8</sup> In the alternative, BTES requests reconsideration of "the portions of the February 13 Order that direct BTES to commence audits of its cost allocation manual for years 2011 and subsequent years..."<sup>9</sup> The TRA as of the date of this joint response has not released a final Order from the January 7, 2013 agenda meeting.

CenturyLink supports the Hearing Examiner's February 13 Order in all respects.<sup>10</sup> CenturyLink addresses immediately below BTES's motion as relating to the issue of the 2010 auditor workpapers requested by CenturyLink and as impacting the undertaking of a 2011 audit.

#### **RESPONSE REGARDING 2010 AUDIT WORKPAPERS**

As to the February 13 Order's ruling on 2010 auditor workpapers, BTES blatantly failed to provide a complete copy of clearly relevant documents. Thus, the February 13 Order correctly required BTES to produce a complete copy of the 2010 auditor workpapers, including an indexed compilation for the 2010 auditor workpapers. BTES in its Motion purports to be working with its auditor to provide the requested information.<sup>11</sup> BTES also claims that it will confer with counsel to develop a procedural schedule upon receipt of the requested information.

First, CenturyLink continues to maintain that BTES promptly and expeditiously provide a complete copy of the auditor's 2010 audit workpapers as originally requested by CenturyLink

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<sup>7</sup> BTES Petition at p. 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> The February 13 Order originally arises from several motions filed by CenturyLink seeking to obtain complete responses to discovery questions originally propounded upon BTES on September 7, 2012.

<sup>11</sup> BTES Petition at p. 2.

over 5 months ago.<sup>12</sup> The Hearing Officer's ruling on BTES's instant motion for reconsideration and stay should make clear that the February 13 Order's requirements regarding CenturyLink's request for 2010 auditor workpapers still remains effective and that BTES should endeavor to expeditiously comply with this aspect of the February 13 Order. Second, once the information is received from BTES, CenturyLink will evaluate all available options and remedies, including whether BTES's actions and non-actions concerning prior TRA orders and its 2006 settlement with CenturyLink give rise to a consolidated proceeding or separate action under existing and applicable law.<sup>13</sup> Accordingly, CenturyLink preservea all rights and arguments to raise issues upon review of information provided by BTES regarding the 2010 audit workpapers and the issues in need of resolution and review when the procedural schedule has been reset.

#### **JOINT RESPONSE REGARDING 2011 AUDIT REQUIREMENT**

The February 13 Order also directed BTES to commence audits of its cost allocation manual for years 2011 and subsequent years. CenturyLink fully supports the Hearing Officer's ruling on this issue. CenturyLink opposes BTES's request for reconsideration of the February

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<sup>12</sup> CenturyLink all along had requested 5-years of audit workpapers, but in good faith voluntarily agreed to auditor workpapers associated the last audit completed by BTES. The resolution of this particular discovery dispute should not be construed as limiting the ability to renew CenturyLink's discovery requests or to request additional discovery in the future in this proceeding, in any proceeding arising from this proceeding, or in another proceeding.

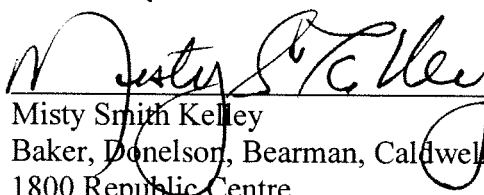
<sup>13</sup> BTES at footnote 2 of its Motion is patently incorrect that the TRA does not have jurisdiction separate from its jurisdiction over CCN requirements to address anti-competitive practices or other similar concerns when involving BTES's cost allocation decisions (or non-decisions). The TRA's jurisdiction regarding the Tennessee municipal electric law was briefed and addressed as part of the threshold legal issue raised to the panel at the January 7, 2013 agenda meeting. In addition, BTES's practices and action either on complaint or the TRA's own motion, for example, could fall within other, non-CCN related provisions. *See, e.g.* Tenn. Code Ann. § 65-5-109(m) (preserving TRA jurisdiction to hear complaints to prohibit anti-competitive practices); § 65-1-117(1) (granting TRA jurisdiction to investigate, upon its own initiative or upon a complaint, any matter concerning any public utility); § 65-1-208(c) (TRA has the power to adopt rules or issue orders to prohibit cross-subsidization or other anti-competitive practices); Tenn. R. and Regs. § 1220-4-8-.09 (TRA is required to investigate any complaint that a telecommunications provider has violated any of the anti-competitive provisions of applicable rules or statutes).

13 Order on this issue. The primary arguments have been fully briefed and addressed as part of threshold legal question, and have been ruled on unanimously by the panel.

CenturyLink, however, recognizes the procedural difficulty of proceeding forward on the issue of a 2011 audit without a final order from the TRA regarding the threshold legal question as addressed at the January 7 TRA agenda conference. Accordingly, CenturyLink does not object to a partial stay of the February 13 Order only as it relates to directing BTES to undertake a 2011 audit, until such time as a final TRA order is entered. In all other respects, CenturyLink opposes BTES's motion.

**WHEREFORE**, as addressed above, CenturyLink respectfully requests that the Hearing Officer dismiss in part and grant in part BTES's Motion for Partial Reconsideration of February 13 Order and Partial Motion to Stay.

Respectfully submitted this 28<sup>th</sup> day of February 2013.




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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 28th day of February, 2013.

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