

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

IN RE:)
)
APPLICATION OF BRISTOL)
TENNESSEE ESSENTIAL SERVICES)
TO EXPAND ITS CERTIFICATE OF) Docket No. 12-00060
CONVENIENCE AND NECESSITY TO)
PROVIDE COMPETING)
TELECOMMUNICATIONS SERVICES)
STATEWIDE)

**PETITION OF BRISTOL TENNESSEE ESSENTIAL SERVICES TO
RECONSIDER MARCH 20, 2013 ORDER ON PRELIMINARY ISSUES AND MOTION
TO DISMISS PETITION BASED UPON CHANGE OF LAW**

In response to the March 20, 2013 *Order on Preliminary Issues* (the “*March 20 Order*”), Bristol Tennessee Essential Services (“BTES”) files this Petition to request that the Tennessee Regulatory Authority (“Authority”) reconsider the *March 20 Order*, and BTES further moves the Authority to dismiss BTES’ petition in this case based upon a change of law.¹ For purposes of this petition to reconsider,² the substantive change in BTES’ position is that recent legislative enactments have further defined the Authority’s jurisdiction over the petition in this Docket and, more broadly, over market-regulated carriers like BTES. For these reasons, BTES submits that the Authority should reconsider the *March 20 Order* based upon this change of law and dismiss BTES’ petition.

¹ BTES requests that, if necessary, its petition for reconsideration and its motion to dismiss be considered as separate and distinct requests. In the event that the Authority denies or does not act upon BTES’ petition for reconsideration within the timeframe provided in Rule 1220-1-2-.20, BTES nevertheless requests a decision on the motion to dismiss contained in this pleading.

² For purposes of any subsequent appeal, if such an appeal were to be necessary, BTES does not waive the arguments presented in its pleadings leading up to the *March 20 Order*.

On March 26, 2013, Governor Haslam signed House Bill 972 (McCormick) and Senate Bill 1180 (Norris)³ into law. The plain language of that new law removes the jurisdiction of the Authority under Tenn. Code Ann. § 65-5-109(n)(12) to require a market regulated carrier like BTES to obtain a certificate pursuant to Tenn. Code Ann. § 65-4-201. The clear language of the new law also expressly provides, in relevant part, that the Authority “shall not impose any requirements relating to issuance or maintenance of a certificate on any market-regulated entity” like BTES (emphasis added). In other words, this new law clearly provides that TRA does not have jurisdiction to either require BTES to obtain a certificate of public convenience and necessity or to enforce requirements under BTES’ existing certificate.

The language of this new law is unambiguous. Among other things, Section 3 of House Bill 972 / Senate Bill 1180 deletes the Authority’s jurisdiction under Tenn. Code Ann. § 65-5-109(n)(12) to require a market-regulated carrier like BTES to obtain an additional certificate of convenience and necessity. Former Tenn. Code Ann. § 65-5-109(n)(12) had preserved the Authority’s jurisdiction to require a market regulated carrier to obtain a certificate of convenience and necessity. The General Assembly has now removed that jurisdiction.

Similarly, Section 4 of House Bill 972 / Senate Bill 1180 expressly provides, in relevant part, that the Authority “shall not impose any requirements relating to issuance or maintenance of a certificate pursuant to § 65-4-201 on any market regulated entity” like BTES. While BTES has consistently taken the position that the General Assembly established the exclusive areas of the Authority’s jurisdiction over a market-regulated carrier under the provisions Tenn. Code Ann. § 65-5-109(m) and (n), with this new legislation, the General Assembly has also made it abundantly clear that the Authority has no jurisdiction to require market-regulated carriers to

³Information concerning House Bill 972 and Senate Bill 1180 is available at <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0972>. As of this filing, the Secretary of State has not assigned a Public Chapter number to this legislation.

obtain or maintain certificates of public convenience and necessity. In other words, with the enactment of this new legislation, the General Assembly has declared that the Authority does not have any jurisdiction to require a market-regulated carrier to obtain a certificate of public convenience and necessity nor any jurisdiction to enforce provisions of existing certificates of public convenience and necessity.

The legislative history is equally compelling and clear on these points. During the House floor debate⁴ immediately prior to passage of House Bill 972, the following exchange occurred between the Speaker of the House of Representatives, the House Majority Leader and bill sponsor Gerald McCormick and Chairman Jon Lundberg:

Speaker Harwell Representative Lundberg, you're recognized.

Chairman Lundberg Thank you, Madam Speaker. Sponsor, the municipal-owned utility in my [legislative district] also provides cable, internet, telephone, and there are several markets where the municipal provides those services. How will that, this bill affect those utilities?

Leader McCormick Thank you. It, and I, I'll take this opportunity to put this on the record. Number one, as noted in the summary, this bill prohibits the TRA from requiring a market-regulated entity to obtain a Certificate of Public Convenience and Necessity and also prohibits the TRA from imposing any requirements related to the issuance or maintenance of a Certificate on any market-regulated entity or any affiliate of a market-regulated entity. And number two, this bill applies equally to all market-regulated entities, competitive telephone companies, incumbent telephone companies, municipal telephone companies and cable television companies. They all have the same rights and obligations under the legislation.

Chairman Lundberg Thank you.

⁴ The video archive of this floor debate is available by opening the "video links" tab at <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0972> and selecting the link to the House floor debate.

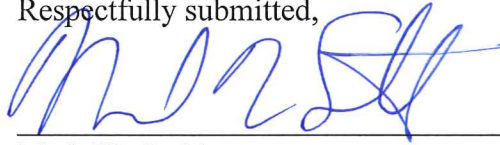
In reaching its conclusions, the Authority looked solely to its jurisdiction under Tenn. Code Ann. § 65-4-201. The third ordering clause and the lynch pin of the holding of the *March 20 Order* specifically provides:

3) When exercising its authority under Tenn. Code Ann. § 65-4-201, the TRA may impose conditions on the granting of a CCN of a market-regulated company, including but not limited to, conditions to prevent anti-competitive behavior under Title 7, [Chapter] 52, Part 4.

Because the *March 20 Order* was based solely upon the Authority's jurisdiction under Tenn. Code Ann. § 65-4-201 – jurisdiction which now no longer exists – BTES requests that the Authority reconsider and withdraw the *March 20 Order* based upon this subsequent change of law.

More broadly, since the General Assembly, with the passage and enactment of House Bill 972 / Senate Bill 1180 , has now removed the Authority's jurisdiction to require BTES to obtain a certificate under Tenn. Code Ann. § 65-4-201 and the Authority's jurisdiction to enforce requirements of existing certificates, the matters before the Authority in this Docket are now moot. Accordingly, BTES respectfully requests that the Authority dismiss this case and close this Docket.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded to the following on this the 2nd day of April, 2013 by the means noted below.

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