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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 RESPONSE AND PETITION FOR DECLARATORY RULING

Intervenor CenturyLink [1] submits this Response to the April 2, 2013 *Petition to Reconsider March 20, 2013 Order on Preliminary Issues and Motion to Dismiss* filed by Bristol Tennessee Essential Services ("BTES"). By this filing, CenturyLink also petitions the TRA for a declaratory ruling pursuant to Tenn. Code Ann. § 65-2-104 as to the impact of recently-enacted Public Chapter No. 61 (SB 1180/HB 972) on the TRA's continued enforcement of the anti-subsidy provisions applicable to municipal telecommunications providers (Tenn. Code Ann. §§ 7-52-401 *et seq.*).

I. INTRODUCTION.

CenturyLink agrees with BTES that the panel should reconsider its March 20, 2013 Order in light of the recently-enacted legislation. BTES is incorrect, however, as to the impact of that legislation on its obligations and the agency's jurisdiction. Contrary to BTES's view, the legislation *does not* remove the TRA's power to enforce the municipal anti-subsidy statutes and *does not* render the requirements of BTES's current certificate null and void. The legislation

[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").

removes the TRA's ability to impose additional requirements on *already-certified* market-regulated entities, such as the obligation to obtain an amended certificate before extending service into new areas. Because BTES's Petition has called into question the validity of the TRA's existing orders, the matter is appropriate for reconsideration by the agency to confirm that BTES (and all other municipal telecommunications providers) continue to be bound by the provisions of their *existing* certificates aimed at ensuring compliance with the anti-subsidy statutes. Continued TRA enforcement of the anti-subsidy statutes is also vital to maintaining the statutorily-required level playing field in the statewide competitive telecommunications market. Because of the importance of this issue, CenturyLink requests that the panel issue a declaratory order confirming the legislation has no impact on the TRA's existing certificate orders, and stating that the TRA will continue to fulfill its long-established role in enforcing the municipal anti-subsidy statutes.

With regard to BTES's motion to dismiss, CenturyLink agrees that BTES's petition for an amended statewide certificate is no longer necessary after the effective date of the legislation. CenturyLink, however, asks the TRA to keep this docket open for the purpose of investigating BTES's compliance with prior TRA orders, the provisions of BTES's existing certificate and BTES's obligations under the anti-subsidy statutes. The limited discovery CenturyLink has been able to obtain thus far reveals troubling questions about BTES's past and current cost allocations and its auditing process. Accordingly, further investigation is merited as to BTES's past and current compliance with prior TRA orders and the anti-subsidy statutes.

II. PUBLIC CHAPTER NO. 61 DOES NOT REMOVE THE TRA's JURISDICTION TO ENFORCE THE ANTI-SUBSIDY STATUTES AND DOES NOT RETROACTIVELY REPEAL THE PROVISIONS OF EXISTING TRA CERTIFICATE ORDERS.

A. *The Authority's Enforcement of the Municipal Anti-Subsidy Provisions of Tenn. Code Ann. §§ 7-52-401 et seq.*

Public Chapter No. 61 amends various provisions of Title 65 concerning the TRA's jurisdiction over certificated telecommunications providers that have elected market regulation. Any interpretation of this new legislation must be guided by the expansive nature of the TRA's jurisdiction over public utilities. "The Tennessee legislature's grant of authority to the TRA is broad indeed. By statute, the General Assembly has explicitly granted the TRA practically plenary authority over the utilities within its jurisdiction." *Consumer Advocate Division v. TRA*, 2012 WL 1964593 *14 (Tenn. Ct. App. May 30, 2012) (internal citations and quotations omitted).

The legislature has repeatedly directed that statutes concerning the TRA's powers "must be liberally construed, with any doubt resolved in the Authority's favor, to the end that the Authority may effectively govern and control the public utilities placed under its jurisdiction." *Id.* (citing Tenn. Code Ann. § 65-4-104); *see also* Tenn. Code Ann. § 65-4-121 (same). There is no doubt that BTES, as a municipal telecommunications provider, is one of the public utilities within the Authority's plenary jurisdiction. *See* Tenn. Code Ann. § 7-52-401 ("Notwithstanding § 65-4-101(6)(B) or any other provision of this code or of any private act, to the extent that any municipality provides any of the [telecommunications] services authorized by this section, such municipality shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, but not limited to, rules or orders governing anti-competitive practices . . . ."). Public Chapter No. 61 therefore must be liberally construed in the TRA's favor, and any ambiguities in the language resolved in favor of preserving the agency's plenary jurisdiction.

One of the TRA's most fundamental powers is the granting of certificates of convenience and necessity authorizing new utilities to begin operations. Tenn. Code Ann. § 65-4-201. This certificate requirement extends to municipal electric utilities entering the telecommunications market: "no individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial areas of operations without first obtaining from the Tennessee regulatory authority a certificate of convenience and necessity for such service or territory . . . ." Tenn. Code Ann. § 65-4-201(b). When the legislature first authorized municipalities to enter the telecommunications business in the late 1990s, it specifically made those providers subject to all the same requirements imposed on private telecommunications companies, including obtaining a certificate before beginning operations and submitting to the plenary jurisdiction of the TRA. *See* Tenn. Code Ann. § 7-52-401.[2]

"The legislators' discussions both in committee and during floor debate regarding Tenn. Code Ann. § 7-52-402 reveal that cross-subsidization was their chief concern with regard to permitting municipal electric utilities to begin providing local telecommunications services in competition with privately owned providers." *U.S. LEC v. TRA*, 2006 WL 1005134 *6 (Tenn. Ct. App. April 17, 2006). To guard against this danger, the legislature specifically prohibited

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[2] "Notwithstanding § 65-4-101(6)(B) or any other provision of this code or of any private act, to the extent that any municipality provides any of the [telecommunications] services authorized by this section, such municipality shall be subject to regulation by the Tennessee regulatory authority in the same manner and to the same extent as other certificated providers of telecommunications services, including, but not limited to, rules or orders governing anti-competitive practices . . . ."

municipal providers from cross-subsidizing their telecommunications operations with monies or other tangible items from their electric operations. Tenn. Code Ann. § 7-52-402 ("A municipality providing any of the [telecommunications] services authorized by § 7-52-401 shall not provide subsidies for such services."); *U.S. LEC,* 2006 WL 1005134 *5-6. As the Tennessee Court of Appeals has recognized, municipal telecommunications providers have an incentive to cross-subsidize by misallocating telecommunications costs to their captive electric customers, thus gaining an unfair competitive advantage in the highly-competitive communications market by selling their telecommunications services below their actual cost. *U.S. LEC,* 2006 WL 1005134 *6. This concern is particularly heightened during the start-up and initial years of a municipal electric's entry into the telecommunications market, as is the case with BTES. *See* Section III below.

The TRA is the entity specifically charged with overseeing all aspects of public utility operations, including policing anti-competitive conduct, and as such, the TRA is the entity that enforces these anti-subsidy provisions. *See* Tenn. Code Ann. § 7-52-401 (municipal providers are subject to TRA jurisdiction); 65-4-201 (in deciding whether to grant a certificate, TRA must consider whether the applicant will comply with Tennessee law); Tenn. Code Ann. § 65-5-109(m) (TRA has jurisdiction to hear complaints to prohibit anti-competitive practices); § 65-1-117(1) (TRA may 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). Nothing in Public Chapter

No. 61 changes BTES's status as a public utility with regard to its telecommunications services. Nothing in Public Chapter No. 61 changes the TRA's jurisdiction to enforce the municipal anti-subsidy statutes and to police anti-competitive conduct by BTES.

The TRA has traditionally exercised this enforcement role primarily through the original certification process. There are currently four municipalities with telecommunications certificates issued by the TRA:

(1) Chattanooga EPB (Docket. 97-07488)

(2) Jackson Energy Authority (Docket 03-00438);

(3) BTES (Docket 05-00251); and

(4) Morristown Utilities (Docket 10-00084).[3]

Additionally, prior to this docket, the TRA granted two of these municipalities amended certificates for statewide service: (1) Chattanooga EPB (Docket 06-00193); and (2) Jackson Energy Authority (07-00201).[4]

All of these six telecommunications certificates include express conditions to ensure the municipalities comply with the anti-subsidy provisions of Tenn. Code Ann. §§ 7-52-401 *et seq.* In each case, the TRA has required the municipality to have independent audits of its cost

[3] In 2000, one additional municipal electric (Memphis Light, Gas & Water/Memphis Networx (99-00909)) obtained a telecommunications certificate but has since sold its telecommunications operations to a private provider. *See* Docket No. 07-00178.

[4] In addition to these four municipal telecommunications providers, five other municipalities offer cable and internet services: Clarksville, Columbia, Fayetteville, Pulaski, and Tullahoma. *See* Rizzuto, *Financial Performance of Tennessee's Municipal Cable and Internet Overbuilds in 2012* (Feb. 25, 2013), attached hereto as Exhibit A. (Note: CenturyLink was not involved in the funding or preparation of this report.) According to their websites, most of these municipalities also offer telephone service. *See* http://www.clarksvillede.com/Phones.asp; http://www.pulaskielectric.org/phone; http://www.tub.net/phone. Despite the statutes requiring certification, none of these municipalities have certificates from the TRA authorizing them to provide competing telecommunications service.

allocations conducted on an annual basis, and to submit those audits, together with comprehensive annual financial reports, to the TRA for its review. Each municipal provider is also required to make its books and records available to the TRA upon request so the agency can verify compliance with the anti-subsidy provisions of Tenn. Code Ann. §§ 7-52-401 *et seq.*[5]

B. Public Chapter No. 61.

Public Chapter No. 61 does not expressly or implicitly amend the anti-subsidy provisions of Tenn. Code Ann. §§ 7-52-401 *et seq.*, the original certificate requirements in § 65-4-201, or any of the provisions establishing the TRA as the entity specifically charged with policing anti-competitive conduct. The provision of Public Chapter No. 61 at issue in this docket instead amends § 65-5-109, the market regulation statute.

It is significant to note the market regulation statute applies only to providers that have already been certificated by the Authority; it does not exempt telecommunications providers from obtaining a certificate from the TRA prior to entering the marketplace. Under the market regulation statute, a "*certificated* provider of local exchange telephone or intrastate long distance telephone service" may elect to operate pursuant to market regulation by filing notice with the Authority. Tenn. Code Ann. § 65-5-109(l) (emphasis added). That notice exempts the provider from future TRA regulation after the effective date of the notice, except in areas preserved by

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[5] The municipal providers' history of compliance with these provisions is spotty at best. Chattanooga EPB failed to submit its required audits for the first three years of its telecommunications operations, until prompted to do so by TRA staff. *See* Dec. 5, 2005 Order in Docket 03-00072. BTES revealed for the first time in this docket that it unilaterally decided to cease doing its audits in 2010, based on BTES's now-rejected interpretation of the market regulation act (§ 65-5-109). The TRA has ordered BTES to resume its lapsed audit process immediately. (Feb. 13, 2013 Order, pp. 11-12.) Moreover, the hearing officer specifically found that BTES failed to maintain sufficient records to permit TRA staff to review its audit filings. *Id.* BTES's past unilateral disregard of TRA orders demonstrates the need for additional scrutiny of BTES's compliance with TRA orders and the municipal anti-subsidy statutes. With regard to the remaining two certified municipalities, Jackson Energy Authority and Morristown Utilities, a search of TRA dockets contains no audit filings from either entity.

statute. Tenn. Code Ann. § 65-5-109(m); *see also* § 7-52-401 (preserving TRA jurisdiction over municipal telecommunications providers and anti-competitive conduct notwithstanding any other provisions of the code). One of the areas of TRA jurisdiction preserved by the market regulation statute is the Authority's role in policing anti-competitive conduct: "the TRA shall continue to exercise its jurisdiction in its role as a dispute resolution forum to hear complaints between certificated carriers, including complaints to prohibit anti-competitive practices and to issue orders to resolve such complaints." Tenn. Code Ann. § 65-5-109(m). As the panel found in its March 20, 2013 Order, in carrying out the General Assembly's mandate in § 65-4-123 to establish an efficient and competitive telecommunications market, "It is not the TRA's responsibility to merely encourage competition, but it must also take reasonable steps to curtail anti-competitive activity." (March 20, 2013 Order, p. 8.)

The provision of Public Chapter No. 61 BTES relies upon has no impact on the Authority's jurisdiction over issuance of original certificates to competing providers, but instead only relieves *already certificated*, market regulated providers (or their affiliates) from additional regulatory requirements after the effective date of their market regulation notice, including the requirement to obtain an amended certificate from the TRA before offering service in new areas. Specifically, Public Chapter No. 61, Section 4 provides: "The regulatory authority shall not impose any requirements relating to issuance or maintenance of a certificate pursuant to § 65-4-201 on any *market-regulated entity* or on any affiliate of a *market-regulated entity*." Pub. Ch. 61, Section 4 (emphasis added).

It is clear from the language of this new subsection that it applies only to market-regulated entities, which by necessity are providers who have previously been certificated by the

Authority. There is no language within the statute indicating this provision alters the Authority's *original* certification jurisdiction in any way. The TRA retains its power to ensure that providers comply with Tennessee law through conditions placed on their original certificates, including conditions to ensure municipal providers comply with the anti-subsidy statutes in §§ 7-52-401 *et seq.* Public Chapter No. 61 applies *prospectively* only to prohibit the TRA from imposing any *additional* certificate issuance or maintenance requirements on a market-regulated provider *after* the effective date of the provider's market regulation notice.

There is no indication the legislature intended a provider's market regulation notice to affect a silent and implicit nullification of *some, but not all* provisions of the provider's previously-issued original certificate. Under BTES's proposed view of Public Chapter No. 61, the legislature has given all telecommunications providers the ability to file a one-page notice that retroactively repeals all conditions placed on that provider's certificate, while at the same time leaving intact only that portion of the original certificate authorizing the provider's initial entry into the market. BTES's interpretation ignores the fundamental nature of conditions. Where the TRA conditions its grant of certificate authority on compliance with certain requirements, if those requirements are not met, the entity does not have the authority to operate. BTES's view is that Public Chapter No. 61 retroactively makes BTES's existing *conditional* certificate an *unconditional* one.

In light of the legislative mandate to construe this legislation liberally and resolve all doubts in favor of preserving the TRA's jurisdiction over public utilities, it is clear the language in Public Chapter No. 61 applies prospectively only to prohibit the TRA from imposing additional issuance or maintenance conditions on a market-regulated provider after the date a provider opts for market-regulation. Public Chapter No. 61 does not remove the Authority's power to impose conditions as part of the original certificate, and does not permit providers to retroactively repeal any existing conditions.

This application of the statutory scheme is consistent with fundamental principles of statutory construction. The legislature is presumed to be aware of state law and administrative agency interpretation of that law, and legislative silence on the subject should be interpreted as legislative approval of the status quo. *Purkey v. American Home Assur.*, 173 S.W.3d 703, 709 (Tenn. Ct. App. 2005). The legislature is thus presumed to be aware of the Authority's original certificate jurisdiction in Tenn. Code Ann. § 65-4-201, the anti-subsidy provisions of §§ 7-52-401 *et seq.*, and the Authority's longstanding practice of enforcing the anti-subsidy provisions through certificate conditions. Public Chapter No. 61 is silent on these matters, and therefore preserves the status quo.[6]

There is no language in Public Chapter No. 61 indicating the legislature intended to retroactively repeal the conditions of BTES's or any other municipal provider's existing certificate, while leaving the grant of the certificate itself intact. Statutes are presumed to operate prospectively unless there is specific language indicating otherwise. *In re D.A.H.*, 142 S.W.3d 267, 273 (Tenn. 2004). There is no language in Public Chapter No. 61 indicating the legislature intended BTES's cited provision to retroactively apply to partially repeal existing TRA orders

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[6] Traditionally, the TRA has enforced the municipal anti-subsidy provisions through certificate conditions, but there is nothing limiting the TRA's enforcement of the municipal anti-subsidy statutes to the context of certificates alone. Even assuming, for the sake of argument, that the TRA no longer has the ability to place conditions on telecommunications certificates, the agency can still fulfill its vital role as the enforcer of the municipal anti-subsidy statutes through a range of options, including individual compliance investigations and orders, or through rulemaking. *See, e.g.*, Tenn. Code Ann. § 65-1-117(1) (TRA may 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).

and certificates. In contrast to the certificate language relied on by BTES, the preceding paragraph of Public Chapter No. 61 eliminating unfunded discount programs *does* expressly repeal existing rules and orders of the Authority: "any such unfunded discount program mandated by rules or orders of the regulatory authority or public service commission that was in place as of the effective date of this act shall terminate sixty (60) days following the effective date of this act." Pub. Ch. 61, Section 4. No such repeal language was included in the certificate provision. This further indicates that if the legislature had intended to remove the conditions within existing TRA orders granting provider certificates, it would have done so expressly as it did in the previous section.

Because the legislature did not expressly repeal existing TRA certificate orders, those orders, including BTES's certificate, remain valid. Implied repeals are not favored, and may be found only where there is no possible way to reconcile the language of the new statute with existing law. *Hayes v. Gibson County,* 288 S.W.3d 334, 338 (Tenn. 2009). Here there is no conflict; Public Chapter No. 61 applies only to prohibit additional certification requirements after the effective date of a previously-certified provider's market regulation notice. The Authority's longstanding jurisdiction to enforce the anti-subsidy provisions of §§ 7-52-401 *et seq.* through the original certification process is unaffected, and its existing orders remain in force.

BTES's argument that Public Chapter No. 61 should be interpreted as silently and retroactively repealing the conditions of its existing certificate also raises significant constitutional concerns. As the TRA noted in its March 20, 2013 Order, the conditions in BTES' existing certificate encompass the terms of a settlement agreement between BTES and CenturyLink. (March 20, 2013 Order, p. 2.) The Tennessee Constitution guarantees that "no retrospective law, or law impairing the obligations of contracts, shall be made." Tenn. Const. Art. I, § 20; *Stewart v. Sewell,* 215 S.W.3d 815, 826 (Tenn. 2007). Applying Public Chapter No. 61 to retroactively remove the conditions within BTES's existing certificate would unconstitutionally impair CenturyLink's vested contract rights. This provides additional reason to reject BTES' proposed construction. *Davis-Kidd Booksellers, Inc. v. McWherter,* 866 S.W.2d 520, 529 (2007) (statutes should be interpreted to avoid constitutional conflict if at all possible).

Finally, BTES's suggestion that Public Chapter No. 61 completely removes the TRA's ability to enforce the anti-subsidy provisions in any way would leave no method for enforcement of the municipal anti-subsidy statutes and the impacts on a proper, functioning competitive telecommunications market. The irrefutable fact remains that preventing such subsidies was the legislature's *chief* concern in permitting municipal providers to enter the telecommunications market. *U.S. LEC,* 2006 WL 1005134 *6. Simply put, BTES's position renders the TRA's enforcement role over telecommunications markets useless. Statutes should not be interpreted to produce such illogical results. *Lee Medical, Inc. v. Beecher,* 315 S.W.3d 515, 527 (May 24, 2010) (interpretations of legislative enactments should "presume that the General Assembly did not intend to enact a useless statute.").

III. THIS DOCKET SHOULD REMAIN OPEN TO INVESTIGATE BTES's COMPLIANCE WITH ITS EXISTING CERTIFICATE AND THE MUNICIPAL ANTI-SUBSIDY STATUTES.

CenturyLink agrees that BTES's petition for amended statewide certification is no longer necessary after the effective date of Public Chapter No. 61. CenturyLink, however, asks the TRA to keep this docket open for the purpose of investigating BTES's compliance with the provisions of its existing certificate and its obligations under the anti-subsidy statutes. As set forth below, the limited evidence obtained thus far raise serious and troubling questions about BTES's past and current cost allocations and auditing process that merit further TRA review.[7]

A. *BTES Has Repeatedly Failed to Comply with the Hearing Officer's Orders Requiring Production of Cost Allocation Audit Information.*

BTES has engaged in a pattern of obstruction in this docket, repeatedly refusing to produce cost allocation audit information despite multiple agency orders. CenturyLink has been forced to file three separate motions to compel, all of which have been granted, and the Hearing Officer has issued three separate orders directing BTES to produce cost allocation audit information. Despite these orders, BTES has yet to provide complete information about its 2010 cost allocation audit.

BTES first objected to producing *any* auditor workpapers for its most recent annual cost allocation audit (fiscal year 2010), claiming the workpapers and back-up information were not relevant. CenturyLink was forced to file a motion to compel, which the Hearing Officer granted. (Nov. 20 Order, p. 9.) The Hearing Officer overruled BTES's objection and specifically found that because the compliance audits were required by BTES's existing certificate, the audits and related workpapers are relevant to BTES's compliance with Tennessee law. (Nov. 20 Order, p. 9.) When BTES finally produced the 2010 workpapers, 11 sections and over 200 pages were missing, making it impossible to conduct a meaningful review of the audit.

When CenturyLink asked BTES to provide the missing information, BTES claimed it did not have a complete set of the workpapers in its possession, and that the obviously missing workpapers were "source documents" and somehow not workpapers at all. BTES further argued

[7] The February 2013 Rizzuto Report attached as Exhibit A concludes that in 2012, BTES priced its communications services below actual cost, in violation of the municipal anti-subsidy statutes. (Ex. A, p. 4.)

that the prior Hearing Officer Order did not require BTES to request a complete set from its auditor. CenturyLink was forced to file a *second* motion to enforce compliance with the Hearing Officer's November 20 Order, which the Hearing Officer granted. The Hearing Officer criticized BTES's hyper-technical interpretation of her previous order, 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.)

BTES next claimed that it could not obtain the missing workpapers because both the company and the auditor had destroyed all paper and electronic copies of the auditor index and workpapers for its 2010 audit. CenturyLink was forced to file a *third* motion seeking access to the 2010 cost allocation audit information. This motion was granted at a January 29, 2013 status conference. In the written order, the Hearing Officer noted the missing workpapers were essential to enable a reviewer to understand the scope and results of the audit work performed and the basis for the auditor's conclusions. The Hearing Officer also found that BTES had failed to comply with the provision of its certificate requiring it maintain its records in a manner permitting TRA audit and review and ordered BTES to engage its auditor to recreate the missing index and missing workpapers. (Feb. 13, 2013 Order, pp. 9-10.)

The February 13, 2013 Order also required BTES to immediately undertake an audit for year 2011, as BTES revealed it previously unilaterally determined that it need not undertake an audit for year 2011.

Despite three motions to compel and three Hearing Officer orders, BTES has failed to produce a complete set of its 2010 audit index and workpapers.[8] On March 18, 2013, BTES provided a CD allegedly in response to the Hearing Examiner's February 13, 2013 Order. BTES did not recreate the index relied upon by BTES's auditor as ordered by the Hearing Examiner. In addition, the following twelve (12) sections of the workpapers were not provided by BTES: Sections G, M, N, O, P, Q, T, U, V, X and Y. To this day, BTES has failed to produce a complete copy of the auditor workpapers relied upon by BTES's auditor to undertake BTES's 2010 audit. Moreover, none of the documents in the CD provided by BTES on March 18, 2013 has explained why BTES continues to withhold these sections, despite the fact its auditor apparently relied upon some portions of these missing workpapers as CenturyLink was able to discern based upon the limited workpapers that BTES did produce.[9]

BTES has merely provided the "results of its 2007 – 2010 CAM [cost allocation manual] compliance audits" and has baldly claimed the audit reports results reach "favorable conclusions."[10] However, whether BTES is compliant with its CAM – let alone whether BTES is compliant with its existing certificate and the anti-subsidy statutes – are issues that remain because BTES has failed to produce the complete indexed compilation of auditor workpapers

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[8] At BTES's request, CenturyLink agreed to narrow the scope of its audit discovery request from 5 years to just the most recent audit. In light of BTES's obstructionist actions, additional information should be produced to determine if BTES's financial practices since becoming certificated in 2006 comply with the TRA's orders and the municipal anti-subsidy statutes.

[9] For example, BTES's auditor noted his reliance upon Section G and W in the portion of workpapers that actually were provided by BTES. However, Section G was not provided. Many of the referenced workpapers in Section W were also not provided by BTES. Only six workpapers from Section W were produced by BTES on March 18, 2013: W-30-3.00, W-30-4.00, W-30-7.00, W-30-8.00, W-30-9.00, and W-30-10.00. Based upon a review of the workpapers BTES actually provided, the auditor cited references to workpapers W-28-1.00, W-29-1.00, W-30-1.00, and W-30-2.00, yet none of these workpapers were provided by BTES.

[10] BTES Response to CTL-1-5.

used for BTES's 2010 audit. The bare minimum of what CenturyLink requested in discovery was not produced by BTES. Moreover, BTES on its own and without TRA approval determined to cease undertaking audits for years 2011 and thereafter.[11] BTES's obstructionist tactics and disregard of the TRA's authority is sufficient reason, standing alone, to merit further investigation by the Authority.

B. BTES's Actions and its Status as a Municipal Electric Demand Greater Regulatory Accountability.

BTES is a municipally-owned electric utility. BTES does not have separate affiliates or subsidiaries, but rather has three intermingled business units – electric, Internet, and telephone.[12] "BTES does not have any personnel whose job responsibilities relate solely to the provisioning of telecommunications, cable or internet services."[13] BTES has a Cost Allocation Manual ("CAM"). BTES has claimed that its CAM audits show compliance with BTES's CAM.

As far as CenturyLink has been able to understand given the limited and incomplete information provided by BTES, BTES records all expenses as common costs to the financial books of BTES's electric unit. BTES thereafter allocates expenses and revenues – vis-à-vis "factors" – to the other two BTES business units. BTES's CAM merely provides that allocation factors (or rates) <u>will be</u> developed for various accounts/functions and that those factors will be used to allocate costs/expenses from BTES's electric unit to BTES's Internet and telephone

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[11] BTES also failed to file a copy of the auditor engagement letter in the docket as specifically requested by the Hearing Officer following the January 29 status conference.

[12] BTES Responses to CTL-1-11 and CTL-1-14. See also, CTL-1-15 and CTL-1-7(b).

[13] BTES Response to CTL-1-12.

units. BTES's CAM *does not show* the calculation of the actual factors. In fact, the only CAM provided to CenturyLink were 2005-2006 CAM.

The 2010 auditor workpapers were requested by CenturyLink, in part, to verify BTES's claimed audit results, but also to ascertain: (1) how BTES developed those allocation factors; and (2) how BTES applied the rates among its three business units. If BTES is under allocating costs to its telephone and cable/Internet business units, then this would be evidence of cross subsidization in violation of Tenn. Code Ann. § 7-52-402. Such cross subsidization is anti-competitive behavior that threatens the competitive telecommunications market. *U.S. LEC*, 2006 WL 1005134 *6. Clearly, given these facts, BTES's municipal electric status warrants greater regulatory scrutiny – not less.

C. Irregularities and Questions Remain Such that Additional Scrutiny is Warranted.

CenturyLink reviewed the limited and incomplete information provided by BTES. Based upon this limited review, CenturyLink was able to determine the existence of numerous auditing irregularities and errors, which have been listed on the attached 16-page summary. (*See*, list attached as Exhibit B.) At the very least, these irregularities and errors are indicative of a sloppy audit and recordkeeping process, and raise questions about the seriousness with which BTES takes its auditing obligations, and the reliability of the audit results.

Furthermore, CenturyLink reviewed information provided by BTES to analyze the allocation of two major expense categories: BTES's Plant Allocation and its allocation of Employment Benefits.

BTES has alleged that its telecommunications operations use capacity on its own fiber optic network (*i.e.*, BTES's "PON" facility). (BTES Petition, p. 4.) In responses to discovery, BTES notes that this fiber plan is used "in connection with its electric system operations" but also is utilized "to provide cable, broadband, internet, and telephone services..."[14] In response to discovery, when asked to provide detail as to how BTES assigns the costs of its fiber optic facilities and infrastructure, BTES objected and referred "CenturyLink to the BTES Cost Allocation Manual for an explanation of how BTES assigns costs of facilities that are shared among business units."[15] The CAM, as addressed above, however does <u>not</u> develop the allocation factor and does not address how BTES applies the factors among its business units. Moreover, the CAM audit workpapers provided by BTES for year 2010 fail to show how the Plant allocation rate was developed or how it was applied by BTES.

What the auditor workpapers reveal, however, is that BTES through March 2010 allocated approximately $765,000 to plant from the electric unit to BTES's telephone unit, comprising a 74% increase over the previous year. Similarly, the auditor workpapers revealed that BTES through March 2010 allocated $2 million to its Internet/cable unit, constituting a 71% increase over the previous year. Such high increases in factors from previous years indicate a correction in the allocation, *i.e.*, that plant was not being properly allocated in previous years, since BTES did not have a corresponding increase in telephone and cable revenues from increased customers. When BTES's financial statements are reviewed, these statements reveal

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[14] BTES Response to CTL-1-7(a).

[15] BTES Response to CTL-1-8.

only a 16% increase in telephone revenues and a 42% increase in cable revenues and thus do not justify the 74%/telephone and 71%/Internet increases in plant allocations for audit year 2010.

BTES was granted a telephone certificate in 2006. Assuming that BTES's telephone business operations began in or around 2007, the sizable plant allocation increases for the 2009-2010 fiscal year (July 1 marks the beginning of their fiscal year) indicate that BTES's electric unit may have subsidized initial entry and startup of the telephone unit. In other words, these allocations illustrate that BTES may have made the telephone unit appear profitable before the telephone unit actually was – or is. This type of activity is precisely what the Tennessee anti-subsidy statute was designed to address and prevent. This is precisely why CenturyLink in discovery originally requested 5-years of audit workpapers and why greater scrutiny and analysis is necessary to determine if BTES has – or if it is – violating the conditions of its existing certificate or the anti-subsidy statutes.

CenturyLink also examined auditor workpapers relating to BTES's allocation of employee benefit expenses among its three business units. Within this category of expenses, CenturyLink could not ascertain where BTES had allocated OPEB (Other Post Employee Benefit) expenses at all to the telephone and cable units. Further investigation and information would be necessary to form a verifiable conclusion as to BTES's treatment of OPEB allocations.

This limited examination of BTES's allocation of only two major expense categories reveals irregularities and raises serious questions. A full and complete review of all of BTES's financial practices is necessary to determine if BTES has complied with the TRA's 2006 Order and whether BTES has been and is complying with the municipal anti-subsidy statutes.

IV. CONCLUSION.

BTES's motion indicates a need for clarification and certainty as to the continued validity of past TRA orders and the TRA's continued role in enforcing the municipal anti-subsidy statutes. CenturyLink requests that the panel issue a declaratory order confirming that: (1) BTES continues to be bound by the conditions of its existing certificate aimed at ensuring compliance with the anti-subsidy statutes; (2) the recently enacted Public Chapter No. 61 has no impact on the TRA's original certificate jurisdiction; and (3) the TRA will continue to fulfill its long-established role in enforcing the anti-subsidy statutes. In light of the serious questions raised with regard to BTES's past and current cost allocations, auditing, and recordkeeping processes, CenturyLink also asks the TRA to keep this docket open for the purpose of investigating BTES's compliance with the provisions of its existing certificate and its obligations under the anti-subsidy statutes.

Respectfully submitted this 12th day of April 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 12th day of April, 2013.

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Financial Performance of Tennessee's Municipal Cable and Internet Overbuilds in 2012

by

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Professor of Finance
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February 25, 2013

Background

As of 2012, there were nine municipal communications operations operating in Tennessee.[1] These nine operations include Bristol, Chattanooga, Clarksville, Columbia, Fayetteville, Jackson, Morristown, Pulaski and Tullahoma. Tennessee's oldest municipal system is Fayetteville. It has been in operation since 2001.

Report Summary

This report provides an update on the financial performance of these municipal operations for the benefit of state legislators and the Comptroller of the Treasury in Tennessee. Hopefully, the financial data included below will provide Tennessee legislators and the Comptroller with key information with respect to the economic viability of these investments.

The major findings in this report are:

1. Municipal electric utilities in Tennessee have incurred deficits of approximately $194 million for these communications ventures.

2. This $194 million in deficits is net of all revenues generated by these investments since inception.

3. During 2012, only four of these nine operations generated sufficient revenues to cover all the costs of their operations (i.e. operating, capital and debt service costs). Columbia, Jackson and Pulaski generated positive free cash flow. Pulaski covered all costs; however in 2010 it shifted most of the debt service costs to the electrical utility.[2] The five other municipal ventures generated deficits.

4. Several of the communications ventures appear to be engaging in practices that are contrary to Tennessee state law.

In light of the concerns of tax payers with the extraordinary budget deficits of the federal government and the significant budget cuts for state and local governments, continued deficits to support municipal communications ventures should prompt Tennessee state legislators to seek answers to the following questions:

- What are ratepayers getting for these expenditures?
- At what point will these operations be self-sustaining?

1 Tennessee had ten until the municipal communications system in Covington was sold to Comcast in 2007.

2 During 2010, $4.59 million in Telecom utility assets and debt were transferred to the electric utility. The only explanation provided was that it was necessary for the new applications model necessary for Smart Grid application (see p. 21 of Pulaski's Comprehensive Financial Report).

Given that the operating practices of these communications ventures appear to be at variance with Tennessee state law, the Comptroller of the Treasury in Tennessee should consider the following questions:

1. Are these municipal communication ventures complying with state law? (See "Tennessee's Municipal Cable and Telecom Overbuilds Compliance with State Law", by Ronald J. Rizzuto, December 23, 2011 for a detailed analysis of he compliance with state law).
2. Does the comptroller need to approve actions by municipalities that shift the debt and assets from the municipal communication ventures to the electric utility?

Financial Results – Deficits Continue to Grow

The data reflected in Figure 1 chronicles the amount of money that municipal electrics in Tennessee have invested in their municipal communications ventures since inception. The amounts listed in this figure represent the cumulative free cash flows since the inception of the venture. Free cash flow is defined as revenues minus operating costs minus capital expenditures minus debt service (interest and principal payments).[3] A positive cumulative free cash flow indicates how much financial value has been generated by the venture. In contrast, a negative cumulative free cash flow underscores the total deficits that have been generated by the project. Since all of these ventures have been financed with borrowed funds, a negative value represents the total indebtedness incurred to operate these systems. For example, as of the end of 2012, the municipal utility in Jackson had accumulated a deficit of $66.4 million on its communications venture.

Likewise, the electric rate payers in Bristol, Chattanooga, Clarksville, Columbia, Fayetteville, Morristown and Pulaski have incurred $1.4 million, $55.9 million, $16.1 million, $14.4 million $7.7 million, $26.3 million and $6.4 million respectively, in debt to support their communications ventures.

As Figure 1 illustrates, as of the end of fiscal year 2012, the municipal electric utilities with communications ventures have incurred deficits of $194.5 million in supporting their municipal ventures. This represents an increase of $5.5 million or 3% over the deficit in 2011excluding Tullahoma.[4]

This persistent and continuous rising debt by municipal electrics in Tennessee raises the question as to "how much is enough?" and "what will it take to increase the cash flows from these ventures so that they become break-even operations?"

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3 Free cash flow is defined as Earnings Before Interest, Depreciation, Amortization and Taxes (EBITDA) minus capital expenditures minus debt service (interest and principal payments). The comparable figure for 'for-profit' ventures is Net Income + Depreciation – capital expenditures-principal payments. (Note: EBITDA rather than Net Income has historically been used in the cable industry as a measure of profitability because of the large depreciation charges resulting from the 'upfront' capital costs associated with the need to build out the network in advance of providing services to customers).

4 The debt accumulated for Tullahoma is as of June 2011 as the 2012 Comprehensive Annual Financial Report was not filed as of the date of this report.

Figure 1
Cumulative Deficits of Tennessee Municipal Electrics from Communications Investments*

	2012**	2011	2010	2009	2008	2007	Years in Operation
Bristol	-1,406,297	-657,456	-3,008,281	-2,495,276	-$2,595,094	-$2,595,094	7
Chattanooga EPB Comm.	-55,871,000	-52,664,000	-40,045,000	-27,119,000	-7,638,000	-6,545,000	8
Clarksville	-16,107,970	-15,372,421	-12,829,994	-10,597,074	-5,157,248	0	5
Columbia	-14,393,136	-14,531,260	-14,546,137	-14,736,445	-14,646,351	-14,592,915	10
Fayetteville	-7,736,406	-7,509,923	-7,633,735	-7,603,338	-7,611,594	-7,645,130	12
Jackson	-66,358,199	-66,035,647	-66,406,916	-68,167,255	-67,774,033	-64,827,859	9
Morristown	-26,266,562	-25,804,074	-25,190,112	-25,414,306	-24,826,504	-21,106,083	8
Pulaski	-6,351,217	-6,412,901	-6,481,770	-6,547,442	-5,850,347	-4,773,416	6
Tullahoma	N/A	-7,222,657	-6,588,035	-4,913,398	---------------	---------------	3
Total	-194,490,787	-196,210,339	-$182,639,980	-$167,593,534	-$136,099,171	-$122,085,497	

* Cumulative free cash flow since inception

** Totals for 2012 exclude Tullahoma since its 2012 Comprehensive Annual Financial Report has not been filed.

Financial Results – Ability to Service Debts

As Figure 2 illustrates, five of the municipal communications operations in Tennessee in 2012 generated negative free cash flow. Since free cash flow measures whether an operation's revenues are sufficient to cover all its operating costs, capital costs and debt service costs, a negative free cash flow indicates that the venture is selling its goods and services below cost.

In 2012, Bristol, Chattanooga, Clarksville, Fayetteville and Morristown priced their services below costs. Bristol generated a deficit of $0.75 million while Clarksville generated a deficit of $0.74 million and Morristown produced a deficit of $0.46 million. Fayetteville generated a deficit of $0.23 million while Chattanooga produced a deficit of $3.2 million. In contrast, two communications operations generated positive free cash flows. Columbia and Jackson generated $0.14 million and $0.32 million respectively in free cash flow.[5]

Although Columbia and Jackson offer some glimmer of hope that Tennessee's municipal entities will begin to pay their way, it is a sobering thought to consider that these municipalities had to incur $5.5 million in debt, as illustrated in Figure 2, to keep these operations running in 2012.

[5] Tullahoma has not filed its 2012 Comprehensive Report; however, based on 2011 experience, it generated negative cash flow.

Figure 2
2007 - 2012 Financial Profile of
Tennessee Municipal Communications Operations

Incremental Debt

	2012	2011	2010**	2009	2008	2007	Years in Operation
Bristol	-748,841	2,350,825	-513,005	99,818	0	$436,096	7
Chattanooga EPB Comm.	-3,207,000	-12,214,000	-13,333,000	-19,479,000	-1,093,000	-1,567,000	8
Clarksville	-735,544	2,477,163	-2,321,265	-5,439,826	-5,157,248	N/A	5
Columbia	138,124	14,897	190,308	-90,094	53,436	76,143	10
Fayetteville	-226,483	123,812	-30,397	8,256	33,536	-338,652	12
Jackson	322,552	371,269	1,760,339	-393,222	-2,946,174	-4,746,432	9
Morristown	-462,488	-613,962	-224,194	-587,802	-3,720,421	-4,478,810	8
Pulaski	61,684	68,869	65,675	-697,095	-1,076,931	-4,773,416	6
Tullahoma	N/A	-634,622	N/A	-4,913, 398	N/A	N/A	3
Total	-$4,857,996	-$8,055,769	-$14,097,681	-$15,392,071			

This inability of municipal electric's communications ventures to service their debt raises questions as to whether these communities need to rethink their business plan and the long-term viability of these ventures. It is interesting to note that in recent years six long-term municipal communications ventures - Alameda, California, Marietta, Georgia, Newnan, Georgia, Lebanon, Ohio, Covington, Tennessee and Memphis, Tennessee (Memphis Light, Gas and Water's Networx Investment) -have sold out. These communities concluded their ventures were no longer viable.

Compliance with Tennessee State Law

Several of the communications ventures in Tennessee appear to be engaging in activities that are contrary to Tennessee state law.

First, Morristown and Pulaski electric utilities appear to be subsidizing their communications ventures. According to the Tennessee Code Annotated Section 7-52-603, the electric utility may not subsidize the operations of the communications unit with revenue from its power operations.

Morristown and Pulaski transferred assets and debts from their telecom division to their electric utility divisions in 2010. Morristown transferred approximately $15.5 in assets and debt from its Telecom division to its electric division in 2010. Morristown's Comprehensive Annual Financial Report did not include any explanation for this transfer. Likewise, Pulaski transferred $4.6 million in debt and assets from its telecom division to its electric utility. The explanation for this transfer was as follows:

> "During the year, the system transferred $4,585,000 of telecom infrastructure and long-term debt to the electric division. This transfer was done with Board and TVA approval to comply with the new allocation model necessary for the Smart Grid applications."

Second, some of the electric utilities are allocating capital costs for the communication business to the electric utility rather than the communication utility. This practice understates capital expenditures as well as the amount of debt service the communication utility is responsible for. The following observations underscore this practice:

- The municipal utility in Bristol has invested $50 million in fiber optic communication infrastructure[6] but has allocated only $2.5 million to its communications operation. The disclosures in Bristol's Comprehensive Annual Financial Report do not provide any details as to the method of the cost allocation to the communications unit for the use of the fiber optic infrastructure of the electric utility.

- The municipal utility in Chattanooga issued bonds for $219.8 million to finance the construction of a fiber optic broadband network; however, only $48 million of that debt was allocated to the communications business unit.[7] Likewise, Chattanooga's disclosures in its Comprehensive Annual Financial Reports do not provide any details as to the cost allocation to the communications unit for the use of the fiber optic infrastructure of the electric utility.

This cost allocation behavior appears to violate TCA Section 7-52-603(3)(c) that states:

> "A municipal electric system providing any of the services authorized by this part shall establish and charge rates that cover all costs related to the provision of such services."

Third, TCA Section 7-52-606 requires that the communications unit make "payments in lieu of taxes." The 2012 comprehensive annual report for the following communications units did not report any 'payments in lieu of taxes': Clarksville, Columbia, Jackson, Morristown and Pulaski. Also, Tullahoma did not note any 'payments in lieu of taxes' in 2011. It was not possible to determine whether any payments were made in 2012 since Tullahoma had not filed its 2012 report as of the date of this report.

The activities noted above appear to be at variance with state law. They would suggest a need for a review by the Comptroller's office.

Summary

Municipalities in the state of Tennessee have invested $194 million in communication ventures over the past ten years. Many of these investments are still not covering all of their costs – operating, debt service and capital reinvestment. Given the fiscal challenges of state and municipal government in today's economy, Tennessee state legislators need to determine whether it is fiscally prudent to continue to support these ventures.

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6 Bristol Comprehensive Annual Financial Report. June 30, 2009, page 27.

7 EPB 2009 Financial Information pp. 12 and 39.

Appendix

Financial Performance Information
For Each Municipal Communications Operation

Exhibit 1

Cash Flows from Bristol, Tennessee Essential Service – Cable/Internet Unit and Telecom Unit

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Revenue	Operating Expenses less Depreciation	Operating Cash Flow	Capital Expenditures	Interest Expense	Other Income	Other Expense	Principal Payments	Annual Free Cash Flow	Cumulative Debt
2006	353,441	(287,785)*	65,656	(3,096,846)	N/A	N/A	N/A	N/A	(3,031,190)	(3,031,190)
2007	2,710,041	(2,273,945)*	436,096	(196,148)	N/A	N/A	(196,148)	N/A	436,096	(2,595,094)
2008	5,647,685	(4,546,090)*	1,101,595	(972,168)**	---	---	(129,427)	N/A	-0-	(2,595,094)
2009	9,540,708	(7,881,231)*	1,659,477	(1,466,353)**	N/A	N/A	(93,306)	N/A	99,818	(2,495,276)
2010	12,656,181	(10,021,950)	2,539,231	(2,234,560)	(50,003)	---	(66,352)	(701,291)	(513,005)	(3,008,281)
2011	14,798,799	(11,712,176)	3,086,623	(702,361)	(33,437)	---	---	---	2,350,825	(657,456)
2012	17,316,269	(13,512,369)	3,803,900	(4,535,755)	(17,186)	200	---	---	(748,841)	(1,406,297)

* *Depreciation is included in operating expense since no breakout of this expense was included in the financial reports.

** Capital expenditures are estimated as the change in net capital assets; the change in net assets for 2008 was restated in 2009.

Exhibit 2
Cash Flows from Chattanooga EPB Communications System

(1) Year	(2) Revenue	(3) Operating Expenses less Depreciation	(4) Operating Cash Flow	(5) Capital Expenditures	(6) Interest Expense	(7) Other Income	(8) Other Expense	(9) Principal Payments	(10) Annual Free Cash Flow	(11) Cumulative Debt
2006	13,032,000	(9,892,000)	3,140,000	(5,648,000)	(1,502,000)	---	(968,000)	---	(4,978,000)	(4,978,000)
2007	14,743,000	(10,179,000)	4,564,000	(3,551,000)	(1,512,000)	---	(312,000)	(756,000)	(1,567,000)	(6,545,000)
2008	16,296,000	(10,471,000)	582,500	(4,580,000)	(1,454,000)	---	(149,000)	(735,000)	(1,093,000)	(7,638,000)
2009	18,287,000	(11,851,000)	6,436,000	(22,022,000)	(1,840,000)	---	(25,000)	(2,030,000)	(19,479,000)	(27,117,000)
2010	22,717,000	(17,708,000)	5,009,000	(15,156,000)	(2,598,000)	---	(2,000)	(586,000)	(13,333,000)	(40,450,000)
2011	45,597,000	(28,732,000)	11,865,000	(21,046,000)	(1,870,000)	---	(57,000)	(593,000)	(12,214,000)	(52,664,000)
2012	66,502,000	(46,870,000)	19,632,000	(16,250,000)	(1,555,000)	---	(352,000)	(4,682,000)	(3,207,000)	(55,871,000)

Exhibit 3
Cash Flows from Clarksville Telecommunications Division

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Revenue	Operating Expenses less Depreciation	Operating Cash Flow	Capital Expenditures	Interest Expense	Other Income	Other Expense	Principal Payments	Annual Free Cash Flow	Cumulative Debt
2008	109,021	(2,071,562)	(1,962,541)	(3,103,838)	(90,869)	---	---	---	(5,157,248)	(5,157,248)
2009	2,149,396	(5,584,406)	(3,435,010)	(1,743,940)	(172,591)	---	---	---	(5,351,541)	(10,508,789)
2010	6,238,174	(7,616,703)	(1,378,529)	(726,279)	(216,397)	---	(65,264)	---	(2,386,469)	(12,895,258)
2011	9,410,270	(9,943,108)	(532,838)	(1,158,916)	(244,264)		---	(541,145)	2,477,163	15,372,421
2012	12,060,459	(11,486,374)	574,085	(793,915)	(244,530)	---	(53,836)	(217,353)	(735,549)	(16,107,970)

Exhibit 4
Cash Flows from Columbia Broadband System

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Year	**Revenue**	**Operating Expenses less Depreciation**	**Operating Cash Flow**	**Capital Expenditures**	**Interest & Other Expense**	**Other Income**	**Principal Payments**	**Annual Free Cash Flow**	**Cumulative Debt**
2003	30,791	(379,825)*	(348,825)	(10,383,128)	(110,953)**	-----	-----	(10,842,906)	(10,842,906)
2004	2,632,288	(2,282,425)	349,863	(2,354,227)	(633,863)	12,859	------	(2,625,368)	(13,468,274)
2005	3,575,743	(2,943,252)	632,491	(933,459)	(630,156)	11,785	(309,739)	(1,229,078)	(14,697,352)
2006	4,280,705	(3,188,400)	1,092,305	(223,397)	(711,420)	8,749	(107,943)	58,294	(14,639,058)
2007	4,816,260	(3,392,370)	1,423,890	(513,697)	(711,698)	17,648	(140,000)	76,143	(14,592,915)
2008	5,090,128	(3,571,351)	1,518,777	(461,172)	(696,659)	19,613	(433,995)++	(53,436)	(14,646,351)
2009	5,183,484	(3,594,028)	1,589,456	(476,382)	(656,127)	12,959	(560,000)	(90,094)	(14,736,445)
2010	5,235,263	(3,542,122)	1,693,141	(317,357)	(610,916)	5,440	(580,000)	190,308	(14,546,137)
2011	5,061,142	(3,499,106)	1,562,036	(372,066)	(583,650)	3,557	(595,000)	14,877	(14,531,260)
2012	5,072,962	(3,609,192)	1,463,770	(150,830)	(557,165)	2,349	(620,000)	138,124	(14,393,136)

** In 2003, the net amount of Interest Expense and Other Income are disclosed.

++ Principal payments in 2008 estimated by calculating the difference in total liabilities between 2008 and 2007.

Exhibit 5
Cash Flows from the Fayetteville Electric System – Telecommunications Division

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Revenue	Operating Expenses less Depreciation	Operating Cash Flow	Capital Expenditures	Interest Expense	Other Income	Other Expense	Principal Payments	Annual Free Cash Flow	Cumulative Debt
2001	59,253	(134,199)	(74,946)	(4,536,753)	(100,289)	27,525	---	---	(4,684,463)	(4,684,463)
2002	955,403	(831,426)	124,017	(832,296)	(396,140)	47,979	---	---	(1,056,440)	(5,740,903)
2003	1,224,181	(1,115,479)	108,702	(479,366)	(386,601)	18,028	---	(100,000)	(839,237)	(6,580,140)
2004	1,646,358	(1,343,971)	302,387	(306,080)	(387,146)	15,268	---	(150,000)	(525,571)	(7,105,711)
2005	1,914,639	(1,439,501)	475,138	(54,710)	(397,150)	26,030	---	(205,000)	(155,692)	(7,261,403)
2006	2,235,211	(1,533,993)	701,218	(145,794)	(419,579)	34,080	---	(215,000)	(45,075)	(7,306,478)
2007	2,496,413	(1,645,209)	851,204	(478,544)	(544,820)	63,558	---	(230,000)	(338,652)	(7,645,130)
2008	2,813,185	(1,809,328)	1,003,857	(184,078)	(471,486)	53,102	---	(367,859)	33,536	(7,611,594)
2009	2,879,312	(1,856,694)	1,022,618	(335,208)	(425,096)	20,560	---	(274,618)	8,256	(7,603,338)
2010	3,150,267	(1,979,376)	1,170,891	(225,036)	(336,402)	12,031	---	(651,881)	(30,397)	(7,633,735)
2011	3,339,058	(2,121,152)	1,217,906	(450,649)	(285,772)	63,050	---	(420,723)	123,812	(7,509,923)
2012	3,533,358	(2,265,131)	1,268,227	(395,410)	(157,466)	(1,834)	---	(940,000)	(226,483)	(7,736,406)

Exhibit 6

Cash Flows from Jackson Energy Authority – Telecommunications Division

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Revenue	Operating Expenses less Depreciation	Operating Cash Flow	Capital Expenditures	Interest Expense	Other Income	Other Expense	Principal Payments	Annual Free Cash Flow	Cumulative Debt
2004	185,532	(748,211)	(562,679)	(19,211,937)	(163,042)	532,171	-----	(51,155)	(19,456,642)	(19,456,642)
2005	3,548,943	(5,868,515)	(2,319,572)	(30,511,036)	(551,084)	482,592	-----	-----	(32,899,100)	(52,355,742)
2006	8,842,006	(7,910,936)	931,070	(6,603,011)	(2,359,765)	306,021	-----	-----	(7,725,685)	(60,081,427)
2007	11,444,999	(8,067,840)	3,377,159	(4,356,345)	(3,667,701)	347,364	---	(446,909)	(4,746,432)	(64,827,859)
2008	14,846,842	(10,515,371)	4,331,331	(3,090,883)	(4,434,762)	248,140	---	---	(2,946,174)	(67,774,033)
2009	18,596,941	(11,766,138)	6,830,803	(2,976,643)	(3,137,672)	128,392	---	(1,238,102)	(393,222)	(68,167,255)
2010	21,365,535	(12,472,251)	8,893,284	(2,007,900)	(2,830,814)	100,570	---	(2,394,801)	1,760,339	(66,406,916)
2011	22,945,595	(13,219,113)	9,726,482	(3,933,406)	(3,157,677)	229,719	---	(2,493,849)	371,269	(66,035,647)
2012	24,852,604	(13,066,468)	11,786,136	(3,492,460)	(2,551,148)	69,104	---	(6,134,184)	(322,552)	(66,358,199)

Exhibit 7
Cash Flows from Morristown Utility Commission – Telecom Division

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	**Revenue**	**Operating Expenses less Depreciation**	**Operating Cash Flow**	**Capital Expenditures**	**Interest Expense**	**Other Income**	**Other Expense**	**Principal Payments**	**Annual Free Cash Flow**	**Cumulative Debt**
2005	---	(4,176)	(4,176)	(731,284)	---	---	---	---	(735,460)	(735,460)
2006	102,690	(692,327)	(589,637)	(15,281,891)	(20,285)	---	---	---	(15,891,813)	(16,627,273)
2007	2,548,590	(3,210,370)	(661,780)	(3,318,506)	(498,524)	---	---	---	(4,478,810)	(21,106,083)
2008	4,503,672	(4,177,977)	325,695	(2,835,220)	(1,240,631)	29,735	---	---	(3,720,421)	(24,826,504)
2009	6,293,434	(4,837,932)	1,455,502	(1,505,549)	(545,471)	7,716	---	---	(587,802)	(25,414,306)
2010	6,502,002	(5,649,838)	852,164	(783,354)	(98,859)	1,161	---	(195,306)	(224,194)	(25,190,112)
2011	6,321,898	(5,516,724)	805,174	(1,269,545)	(47,894)	1,200	---	(102,897)	(613,962)	(25,804,074)
2012	7,040,300	(6,051,978)	988,322	(1,293,512)	(51,189)	1,687	---	(107,796)	(462,488)	(26,266,562)

Exhibit 8
Cash Flows from Pulaski Electric System – Telecom Division

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	**Revenue**	**Operating Expenses less Depreciation**	**Operating Cash Flow**	**Capital Expenditures**	**Interest Expense**	**Other Income**	**Other Expense**	**Principal Payments**	**Annual Free Cash Flow**	**Cumulative Debt**
2007	125,665	(349,599)	(223,934)	(4,637,703)	(154,648)	242,869	-----	-----	(4,773,416)	(4,773,416)
2008	1,554,458	(1,259,869)*	294,589	(1,101,768)	(331,285)	61,533	---	---	(1,076,931)	(5,850,347)
2009	2,195,268	(1,430,030)	765,238	(1,142,900)	(331,505)	12,072	---	---	(697,095)	(6,547,442)
2010	2,133,668	(1,933,922)	199,746	---	(135,693)	1,619	---	---	65,675	(6,481,770)
2011	2,504,309	(1,982,479)	521,830	(209,214)	(152,251)	617	---	(92,120)	68,869	(6,412,901)
2012	2,721,820	(2,217,005)	504,815	(158,379)	(147,082)	510	---	(138,180)	61,684	(6,351,217)

Exhibit 9
Cash Flows from Tullahoma

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
Year	Revenue	Operating Expenses less Depreciation	Operating Cash Flow	Capital Expenditures	Interest Expense	Other Income	Other Expense	Principal Payments	Annual Free Cash Flow	Cumulative Debt
2009	856,143	(1,219,347)	(363,204)	(4,697,242)	---	147,048	---	---	(4,913,398)	(4,913,398)
2010	2,982,949	(3,400,536)	(417,587)	(1,261,897)	(15,579)	20,426	---	---	(1,674,637)	(6,588,035)
2011	3,843,861	(3,344,913)	498,948	(454,614)	(721,960)	42,964	---	---	(634,622)	(7,222,657)

Exhibit B

Errors and Irregularities with TN BTES 2010 audit "workpapers"

1. Workpaper A-1-1.00, footnotes A and D. Numbers do not tie to supporting workpapers.

2. Workpaper A-1-1.01 footnote A (Purchased Power Cost) for May, 2009. Number does not tie.

3. Workpaper A-1-1.01 footnote B. Cannot locate source documents for April-June 2009. Workpapers cited are for July 2009-June 2010.

4. Workpaper A-1-1.01 footnote C. Cannot locate source documents for April-June 2009. Workpapers cited are for July 2009-June 2010.

5. Workpaper A-1-1.01 footnote D. Cannot locate source documents for April-June 2009. Workpapers cited (and citation is incorrect) are for July 2009-June 2010.

6. Workpaper A-1-1.04, footnote A cites are incorrect. Should be A-1-5.01 to A-1-5.09.

7. Workpaper B-1-1.05. No support provided for 180 apartment units. No change in this number during all quarters?

8. Workpaper C-1-1.00. No support provided for company calculations.

9. Workpaper C-1-1.01A, footnote H. Cannot locate source documents for April-June 2009. Workpapers cited are for July 2009-June 2010.

10. Workpaper C-1-1.01A, footnote A. Cannot locate source documents for April 2009. Workpapers cited are for July 2009-June 2010.

11. Workpaper C-1-1.01A, footnote B. Cannot locate source documents for April 2009. Workpapers cited are for July 2009-June 2010.

12. Workpaper C-1-1.01A, footnote C. Cannot locate source documents for April 2009. Workpapers cited are for July 2009-June 2010.

13. Workpaper C-1.-1.01A, footnote E. No number in workpaper includes a footnote E.

14. Workpaper C-1-1.01A, footnote F. No citation included.

15. Workpaper C-1-1.01A, footnote G. Cannot locate source documents for April 2009. Workpapers cited are for July 2009-June 2010.

16. Workpaper C-1-1.01B, footnote H. Cannot locate source documents for April-June 2009. Workpapers cited are for July 2009-June 2010.

17. Workpaper C-1-1.01B, footnote A. Cannot locate source documents for May 2009. Workpapers cited are for July 2009-June 2010.

18. Workpaper C-1-1.01B, footnote B. Cannot locate source documents for May 2009. Workpapers cited are for July 2009-June 2010.

19. Workpaper C-1-1.01B, footnote C. Cannot locate source documents for May 2009. Workpapers cited are for July 2009-June 2010.

20. Workpaper C-1-1.01B, footnote E. No numbers in schedule includes a footnote E. Footnote E also references workpaper G-1-1.00, which was not provided.

21. Workpaper C-1-1.01B, footnote F. Cannot locate source documents for May 2009. Workpapers cited are for July 2009-June 2010.

22. Workpaper C-1-1.01B, footnote G. Cannot locate source documents for May 2009. Workpapers cited are for July 2009-June 2010.

23. Workpaper C-1-1.01C, footnote H. Cannot locate source documents for June 2009. Workpapers cited are for July 2009-June 2010.

24. Workpaper C-1-1.01C, footnote A. Cannot locate source documents for June 2009. Workpapers cited are for July 2009-June 2010.

25. Workpaper C-1-1.01C, footnote B. Cannot locate source documents for June 2009. Workpapers cited are for July 2009-June 2010.

26. Workpaper C-1-1.01C, footnote C. Cannot locate source documents for June 2009. Workpapers cited for July 2009-June 2010.

27. Workpaper C-1.01C, footnote E. No numbers in schedule includes a footnote E. Footnote E also references workpaper G-1-1.00, which was not provided.

28. Workpaper C-1-1.01C, footnote F. Cannot locate source documents for June 2009. Workpapers cited are for July 2009-June 2010.

29. Workpaper C-1-1.01C, footnote G. Cannot locate source documents for June 2009. Workpapers cited are for July 2009-June 2010.

30. Workpaper C-1-1.02A, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F-1-1.00.

31. Workpaper C-1-1.02A, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

32. Workpaper C-1-1.02A, footnote G. No numbers in schedule includes a footnote G.

33. Workpaper C-1-1.02A, footnote H. Difficult to tie out numbers because employee data has been redacted.

34. Workpaper C-1-1.02B, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F.1-1.00.

35. Workpaper C-1-1.02B, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1.1.00

36. Workpaper C-1-1.02B, footnote G. No numbers in schedule reference footnote G.

37. Workpaper C-1-1.02B, footnote H. Difficult to tie out numbers because employee data has been redacted.

38. Workpaper C-1-1.02C, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F-1-1.00

39. Workpaper C-1-1.02C, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

40. Workpaper C-1-1.02C, footnote G. No numbers in schedule reference footnote G.

41. Workpaper C-1-1.02C, footnote H. Difficult to tie out numbers because employee data has been redacted.

42. Workpaper C-1-1.03A, footnote C. No numbers in schedule reference footnote C.

43. Workpaper C-1-1.03A, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F-1-1.00

44. Workpaper C-1-1.03A, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

45. Workpaper C-1-1.03A, footnote G. No numbers in schedule reference footnote G.

46. Woripaper C-1-1.03A, footnote H. Difficult to tie out numbers because employee data has been redacted.

47. Workpaper C-1-1.03B, footnote C. No numbers in schedule reference footnote C.

48. Workpaper C-1-1.03B, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F-1-1.00

49. Workpaper C-1-1.03B, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

50. Workpaper C-1-1.03B, footnote G. No numbers in schedule reference footnote G.

51. Workpaper C-1-1.103B footnote H. Difficult to tie out numbers because employee data has been redacted.

52. Workpaper C-1-1.03C, footnote C. No numbers in schedule reference footnote C.

53. Workpaper C-1-1.03C, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F-1-1.00

54. Workpaper C-1-1.03C, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

55. Workpaper C-1-1.03C, footnote G. No numbers in schedule reference footnote G.

56. Workpaper C-1-1.03C, footnote H. Difficult to tie out numbers because employee data has been redacted.

57. Workpaper C-1-1.04A, footnote C. No numbers in schedule reference footnote C

58. Workpaper C-1-1.04A, footnote E. Cites workpaper G-1-1.00, which was not provided. Numbers do tie to workpaper F-1-1.00

59. Workpaper C-1-1.04A, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

60. Workpaper C-1-1.04A, footnote G. No numbers in schedule reference footnote G.

61. Workpaper C-1-1.04A, footnote H. Difficult to tie out numbers because employee data has been redacted.

62. Workpaper C-1-1.04A. Two numbers show a footnote of ?. No reference provided

63. Workpaper C-1-1.04B, footnote C. No numbers in schedule reference footnote C.

64. Workpaper C-1-1.04B, footnote E. Cites workpaper G-1-1.00, which has not been provided. Numbers do tie to workpaper F-1-1.00

65. Workpaper C-1-1.04B, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

66. Workpaper C-1-1.04B, footnote G. No numbers in schedule reference footnote G.

67. Workpaper C-1-1.04B, footnote H. Difficult to tie out numbers because employee data has been redacted.

68. Workpaper C-1-1.04C, footnote C. No numbers in schedule reference footnote C.

69. Workpaper C-1-1.04C, footnote E. Cites workpaper G-1-1.00, which has not been provided. Numbers do tie to workpaper F-1-1.00

70. Workpaper C-1-1.04C, footnote F. Numbers do not tie to supporting documents. Numbers do tie to workpaper K-1-1.00

71. Workpaper C-1-1.04C, footnote G. No numbers in schedule reference footnote G.

72. Workpaper C-1-1.04C, footnote H. Difficult to tie out numbers because employee data has been redacted.

73. Workpaper D-1-1.05, footnote E. Two out of the four numbers do not tie to source document.

74. Workpaper D-1-1.05, footnote I. One out of the three numbers does not tie to source document.

75. Workpaper F-1-1.01. No citation for source of BDM Direct Hours or Additional C&I Hours.

76. Workpaper F-1-1.02. No citation for source of BDM Direct Hours or Additional C&I Hours.

77. Workpaper F-1-1.03. No citation for source of BDM Direct Hours or Additional C&I Hours.

78. Workpaper F-1-1.04. No citation for source of BDM Direct Hours or Additional C&I Hours.

79. Workpaper H-1-1.01. Why is FICA Tax Expense (Acct. 408.30) number being pulled from Worker's Compensation Report?

80. Workpaper H-1-1.00. Why such a large difference between company calculation and auditor calculation of benefit factor?

81. Workpaper H-1-1.02. Number for FICA Tax Expense under Benefits is incorrect for July 2009.

82. Workpaper H-1-1.04. No supporting documentation for Labor or Benefits expenses for accounts 926.10 (Employee Group Insurance), 926.20 (Employee Retirement Plan), and 926.25 (401K Employer Clearing Account) for February.

83. Workpaper I-1.100, footnotes A, B, C, and D. Cites workpapers I-1-1.01, I-1-1.02, I-1-1.03, and I-1-1.04, which were not provided. Numbers do tie to workpapers I-1-1.01A through I-1-1.01C, I-1-1.02A through I-1-1.02C, I-1-1.03A through I-1-1.03C, and I-1-1.04A through I-1-1.04C.

84. Workpapers I-1-1.01A through I-1-1.04C, footnote B. Difficult to tie out numbers because employee data has been redacted.

85. Workpaper J-1-1.00. No citation or supporting documentation for company calculation.

86. Workpaper K-1-1.00. No supporting documentation for company calculation.

87. Workpaper K-1-1.01, footnotes E and F. No number in schedule references these footnotes.

88. Workpaper K-1-1.02, footnotes E and F. No number in schedule references these footnotes.

89. Workpaper K-1-1.03. Numbers for C&I and Telephone for January for Kenneth King and Steve Keesling do not tie to referenced document. Numbers do tie to a different document. In addition, the same document should be referenced across all business segments. For these two individuals, the footnotes cite different documents.

90. Workpaper K-1-1.03, footnote E indicates that the vehicle expense is "All Electric," however the expense is being allocated to all three business segments.

91. Workpaper K-1-1.04, footnote E indicates that the vehicle expense is "All Electric," however the expense is being allocated to all three business segments.

92. Workpaper K-2.100. No vehicle expense shown in July for vehicle 40. Backup documentation shows $1895.44.

93. Workpaper K-2-1.00. No vehicle expense shown in September for vehicle 40. Backup documentation shows $797.10

94. Workpaper K-2-1.00. No vehicle expense shown for October for vehicle 31. Backup documentation shows $291.10

95. Workpaper K-2-1.00. No vehicle expense shown for October for vehicle 40. Backup documentation shows $884.75.

96. Workpaper K-2-1.00. No vehicle expense shown for November for vehicle 31. Backup documentation shows $219.99.

97. Workpaper K-2-1.00. No vehicle expense shown for November for vehicle 40. Backup documentation shows $820.64.

98. Workpaper K-2-1.00. No vehicle expense shown for December for vehicle 32. Backup documentation shows $203.71.

99. Workpaper K-2-1.00. No vehicle expense shown for December for vehicle 40. Backup documentation shows $889.34.

100. Workpaper K-2-1.00. February vehicle expense for vehicle 34 shows as $54.08. Backup documentation does not show any expense for this vehicle in February.

101. Workpaper K-2-100. February vehicle expense for vehicle 40 shows as $732.23. Backup documentation does not show any expense for this vehicle in February.

102. Workpaper K-2-1.00. June vehicle expense for vehicle 34 shows as $101.04. Backup documentation does not show any expense for this vehicle in June.

103. Workpaper K-2-1.00. June vehicle expense for vehicle 40 shows as $1025.03. Backup documentation does not show any expense for this vehicle in June.

104. Workpaper K-1-1.05 footnote A references Audit Workpaper R-1-1.05. Cannot tie numbers to referenced document.

105. Workpaper S-1-1.00, footnote A references Workpaper R-1-1.05. Cannot tie numbers to referenced document.

106. Workpaper S-1-1.01 footnote A. Unable to tie out numbers because employee information was redacted.

107. Workpaper S-1-1.01 footnote B. Unable to tie out numbers because employee information was redacted.

108. Workpaper S-1-1.01 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

109. Workpaper S-1-1.01, footnote I references workpaper K-1-1.00. Numbers do not tie out to source document.

110. Workpaper S-1-1.01, footnote J. No number in the schedule references footnote J.

111. Workpaper S-1-1.02 footnote A. Unable to tie out numbers because employee information was redacted.

112. Workpaper S-1-1.02 footnote B. Unable to tie out numbers because employee information was redacted.

113. Workpaper S-1-1.02 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

114. Workpaper S-1-1.02, footnote I references workpaper K-1-1.00. Numbers do not tie out to source document.

115. Workpaper S-1-1.02, footnote J. No number in the schedule references footnote J.

116. Workpaper S-1-1.03 footnote A. Unable to tie out numbers because employee information was redacted.

117. Workpaper S-1-1.03 footnote B. Unable to tie out numbers because employee information was redacted.

118. Workpaper S-1-1.03 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

119. Workpaper S-1-1.03, footnote I references workpaper K-1-1.00. Numbers do not tie out to source document.

120. Workpaper S-1-1.03, footnote J. No number in the schedule references footnote J.

121. Workpaper S-1-1.04 footnote A. Unable to tie out numbers because employee information was redacted.

122. Workpaper S-1-1.04 footnote B. Unable to tie out numbers because employee information was redacted.

123. Workpaper S-1-1.04 footnote D. Numbers are off slightly from source document.

124. Workpaper S-1-1.04 line 23. Electric references footnote F while C&I and Telephone reference footnote E. C&I and Telephone do not tie back to referenced document.

125. Workpaper S-1-1.04 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

126. Workpaper S-1-1.04 line 29. Electric references footnote I while C&I and Telephone reference footnote H. C&I and Telephone do not tie back to referenced document.

127. Workpaper S-1-1.04 footnote I. Why are 3Q 2009 allocations being used instead of 4Q?

128. Workpaper S-1-1.05 footnote A. Unable to tie out numbers because employee information was redacted.

129. Workpaper S-1-1.05 footnote B. Unable to tie out numbers because employee information was redacted.

130. Workpaper S-1-1.05 footnote D. Numbers are off slightly from source document.

131. Workpaper S-1-1.05 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

132. Workpaper S-1-1.05 footnote I. Why are 3Q 2009 allocations being used instead of 4Q?

133. Workpaper S-1-1.05. Why do totals not agree?

134. Workpaper S-1-1.06 footnote A. Unable to tie out numbers because employee information was redacted.

135. Workpaper S-1-1.06 footnote B. Unable to tie out numbers because employee information was redacted.

136. Workpaper S-1-1.06 footnote D. Numbers are off slightly from source document.

137. Workpaper S-1-1.06 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

138. Workpaper S-1-1.06 footnote I. Why are 3Q 2009 allocations being used instead of 4Q?

139. Workpaper S-1-1.07 footnote A. Unable to tie out numbers because employee information was redacted.

140. Workpaper S-1-1.07 footnote B. Unable to tie out numbers because employee information was redacted.

141. Workpaper S-1-1.07 footnote D. Numbers are off slightly from source document.

142. Workpaper S-1-1.07 footnote E. No number in the schedule references footnote E.

143. Workpaper S-1-1.07 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

144. Workpaper S-1-1.07 footnote I. Why are 4Q 2009 allocations being used instead of 1Q 2010?

145. Workpaper S-1-1.08 footnote A. Unable to tie out numbers because employee information was redacted.

146. Workpaper S-1-1.08 footnote B. Unable to tie out numbers because employee information was redacted.

147. Workpaper S-1-1.08 footnote D. Numbers are off slightly from source document.

148. Workpaper S-1-1.08 footnote E. No number in the schedule references footnote E.

149. Workpaper S-1-1.08 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

150. Workpaper S-1-1.08 footnote I. Why are 4Q 2009 allocations being used instead of 1Q 2010?

151. Workpaper S-1-1.09 footnote A. Unable to tie out numbers because employee information was redacted.

152. Workpaper S-1-1.09 footnote B. Unable to tie out numbers because employee information was redacted.

153. Workpaper S-1-1.09 footnote D. Numbers are off slightly from source document.

154. Workpaper S-1-1.09 footnote E. No number in the schedule references footnote E.

155. Workpaper S-1-1.09 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

156. Workpaper S-1-1.09 footnote I. Why are 4Q 2009 allocations being used instead of 1Q 2010?

157. Workpaper S-1-1.10 footnote A. Unable to tie out numbers because employee information was redacted.

158. Workpaper S-1-1.10 footnote B. Unable to tie out numbers because employee information was redacted.

159. Workpaper S-1-1.10 footnote D. Numbers are off slightly from source document.

160. Workpaper S-1-1.10 footnote E. No number in the schedule references footnote E.

161. Workpaper S-1-1.10 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

162. Workpaper S-1-1.10 footnote I. Why are 1Q 2010 allocations being used instead of 2Q?

163. Workpaper S-1-1.11 footnote A. Unable to tie out numbers because employee information was redacted.

164. Workpaper S-1-1.11 footnote B. Unable to tie out numbers because employee information was redacted.

165. Workpaper S-1-1.11 footnote D. Numbers are off slightly from source document.

166. Workpaper S-1-1.11 footnote E. No number in the schedule references footnote E.

167. Workpaper S-1-1.11 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

168. Workpaper S-1-1.11 footnote I. Why are 1Q 2010 allocations being used instead of 2Q?

169. Workpaper S-1-1.12 footnote A. Unable to tie out numbers because employee information was redacted.

170. Workpaper S-1-1.12 footnote B. Unable to tie out numbers because employee information was redacted.

171. Workpaper S-1-1.12 footnote D. Numbers are off slightly from source document.

172. Workpaper S-1-1.12 footnote E. No number in the schedule references footnote E.

173. Workpaper S-1-1.12 footnote G. No number in the schedule references footnote G. Footnote G also refers to workpaper G-1-1.00, which was not provided.

174. Workpaper S-1-1.12 footnote I. Why are 1Q 2010 allocations being used instead of 2Q?

175. Workpaper R-1-1.01. No cites indicating source of information.

176. Workpaper R-1-1.03. No cites indicating source of information for Taxes or ROI.

177. Workpaper R-1-1.03 footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

178. Workpaper R-1-1.03 footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

179. Workpaper R-1-1.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

180. Workpaper R-1-1.05, states the source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

181. Workpaper R-1-2.01. No cites indicating source of information.

182. Workpaper R-1-2.03. Amounts for Accumulated Depreciation are incorrect.

183. Workpaper R-1-2.03. No cites indicating sources of information for Taxes and ROI.

184. Workpaper R-1-2.03 footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

185. Workpaper R-2-1.03 footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

186. Workpaper R-1-2.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

187. Workpaper R-1-2.05, states the source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

188. Workpaper R-1-3.01. No cite indicating source of information.

189. Workpaper R-1-3.03. No cites indicating sources of information for Taxes and ROI.

190. Workpaper R-1-3.03 footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

191. Workpaper R-1-3.03 footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

192. Workpaper R-1-3.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

193. Workpaper R-1-3.05, states the source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

194. Workpaper R-1-3.05. C&I allocation percentage for Property is incorrect.

195. Workpaper R-1-4.01. No cite indicating source of information.

196. Workpaper R-1-4.03. No cites indicating sources of information for Taxes and ROI.

197. Workpaper R-1-4.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

198. Workpaper R-1-4.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

199. Workpaper R-1-4.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

200. Workpaper R-1-4.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

201. Workpaper R-1-5.01. No cite indicating source of information.

202. Workpaper R-1-5.03. No cites indicating sources of information for Taxes and ROI.

203. Workpaper R-1-5.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

204. Workpaper R-1-5.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

205. Workpaper R-1-5.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

206. Workpaper R-1-5.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

207. Workpaper R-1-6.01. No cite indicating source of information.

208. Workpaper R-1-6.03. No cites indicating sources of information for Taxes and ROI.

209. Workpaper R-1-6.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

210. Workpaper R-1-6.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

211. Workpaper R-1-6.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

212. Workpaper R-1-6.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

213. Workpaper R-1-7.01. No cite indicating source of information.

214. Workpaper R-1-7.03. No cites indicating sources of information for Taxes and ROI.

215. Workpaper R-1-7.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

216. Workpaper R-1-7.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

217. Workpaper R-1-7.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

218. Workpaper R-1-7.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

219. Workpaper R-1-8.01. No cite indicating source of information.

220. Workpaper R-1-8.03. No cites indicating sources of information for Taxes and ROI.

221. Workpaper R-1-8.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

222. Workpaper R-1-8.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

223. Workpaper R-1-8.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

224. Workpaper R-1-8.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

225. Workpaper R-1-9.01. No cite indicating source of information.

226. Workpaper R-1-9.03. No cites indicating sources of information for Taxes and ROI.

227. Workpaper R-1-9.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

228. Workpaper R-1-9.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

229. Workpaper R-1-9.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

230. Workpaper R-1-9.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

231. Two sets of workpapers labeled R-1-4.xx, one for October 2009 and one for April 2010.

232. Workpaper R-1-4.01 (April). No cite indicating source of information.

233. Workpaper R-1-4.03 (April). No cites indicating sources of information for Taxes and ROI.

234. Workpaper R-1-4.03 (April), footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

235. Workpaper R-1-4.03 (April), footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

236. Workpaper R-1-4.04 (April), states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

237. Workpaper R-1-4.05 (April), states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

238. Workpaper R-1-11.01. No cite indicating source of information.

239. Workpaper R-1-11.03. No cites indicating sources of information for Taxes and ROI.

240. Workpaper R-1-11.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

241. Workpaper R-1-11.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

242. Workpaper R-1-11.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

243. Workpaper R-1-11.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

244. Workpaper R-1-12.01. No cite indicating source of information.

245. Workpaper R-1-12.03. No cites indicating sources of information for Taxes and ROI.

246. Workpaper R-1-12.03, footnote E refers to workpaper W-30-5.00, which was not provided. Number does tie to workpaper R-30-5.00.

247. Workpaper R-1-23.03, footnote F refers to workpaper W-30-6.00, which was not provided. Am able to tie some numbers to R-30-6.00, but not all.

248. Workpaper R-1-12.04, states the source is Audit Workpaper W-30-1.00, which was not provided. Cannot tie out dollars.

249. Workpaper R-1-12.05, states source is Audit Workpaper W-30-2.00, which was not provided. Cannot tie out dollars.

250. Workpaper W-30-3.00 indicates source is workpapers R-2-1.00 through R-2-12.00. Actual source is backup documentation that was not labeled.

251. Workpaper W-30-4.00 indicates source is workpapers R-2-1.00 through R-2-12.00. Cannot locate source documents.

252. Workpaper W-30-7.00 indicates two different sources: first, workpapers W-28-1.00 and W-29-1.00, which were not provided; second workpapers R-2-1.00 through R-2-12.00. Actual source was backup documentation provided with Section R that was not labeled.

253. Workpaper W-30-8.00 indicates two different sources: first, workpapers W-28-1.00 and W-29-1.00, which were not provided; second workpapers R-2-1.00 through R-2-12.00. Actual source was backup documentation provided with Section R that was not labeled. Several pieces of documentation were missing:

   a. CenturyLink for the month of July 2009.

   b. Legal (Tom Davenport) for the months of July, August, October, November, and December 2009 and January 2010.

   c. Picnic for August 2009.

   d. Office supplies for August and September 2009.

254. Workpaper W-30-8.00, backup documents for Pitney Bowes for January 2010 shows $699.55; schedule shows $23,330.01.

255. Workpaper W-30-8.00, backup documents for Pitney Bowes for February 2010 shows $679.90; schedule shows $2,694.85

256. Workpaper W-30-8.00, backup documents show Pitney Bowes for April and May 2010 shows actual vendor of Purchase Power.

257. Workpaper W-30-8.00, backup documents for Pitney Bowes for June 2010 shows $192.00; schedule shows $960.99. Second document for Purchase Power of $768.99.

258. Workpaper W-30-9.00 indicates two different sources: first workpapers W-28-1.00 and W-29-1.00, which were not provided; second workpapers R-2-1.00 through R-2-12.00. Actual

source was backup documentation provided with Section R that was not labeled. Missing documentation for the months of July and December 2009 and January, March, and May 2010.

259. Workpaper W-30-10.00 indicates source is workpapers R-2-1.00 through R-2-12.00. Cannot tie out numbers to any documents in Section R.

260. Workpaper Z-2-1.01 cannot find numbers for July 2009 in cited documents.

261. Workpaper Z-3-1.02. Most numbers do not tie to source document.

262. Workpaper Z-4-1.01. Cannot find documentation for June adjustment.

263. Workpaper Z-4-1.02 cites workpaper K-1-1.00. None of the numbers tie to this schedule. Numbers do tie to backup documentation for K-1-1.00.

264. Workpapers Z-5-1.00 through Z-5-4.03. Journal entry descriptions make it difficult to determine if correct entry is being picked up.