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May 28, 2013

James Allison, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Dear Mrs. Cashman-Grams:

Please see attached a response to motion of Bristol Tennessee Essential Services to dismiss petition based upon a change of law and CenturyLink's petition for declaratory ruling.

If you have any questions concerning this matter, please do not hesitate to contact me.

Sincerely,

FARRIS MATHEWS BOBANGO PLC


Charles B. Welch, Jr.

Cc: Kelly Cashman-Grams

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

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

**RESPONSE TO MOTION OF BRISTOL TENNESSEE ESSENTIAL SERVICES TO DISMISS
PETITION BASED UPON A CHANGE OF LAW AND CENTURYLINK'S PETITION FOR
DECLARATORY RULING**

The Tennessee Cable Telecommunications Association ("TCTA") respectfully submits this response to Bristol Tennessee Essential Services' ("BTES") motion to dismiss petition based upon a change of law filed April 2, 2013 and the CenturyLink petition for declaratory ruling filed April 12, 2013.

I.

The TCTA reaffirms its concurrence with CenturyLink's position as to the Authority's jurisdiction to enforce the municipal anti-subsidy provision of Tenn. Code Ann. Section 7-52-401 et seq. This response is for the sole purpose of raising an objection to the other Parties' contention that Public Chapter No. 61 eliminates the Authority's jurisdiction to require BTES' compliance with Tenn. Code Ann. Section 65-4-201.

The other Parties rely upon section 4 of Public Chapter No. 61 for the proposition this newly enacted legislation removes the requirement of any market-regulated entity from obtaining or maintaining a Certificate of Convenience and Public Necessity ("CCN"). The language of this section is overly broad and is incapable of application due to

vagueness under such an interpretation. Furthermore, this application would require the Authority to ignore other statutory provisions. BTES and CenturyLink make an unreasonable assumption that the Authority's jurisdiction under Section 201 has been totally eliminated as to market regulated providers. It is well established that an entity seeking market-regulated status must first obtain a CCN under Section 109 in order to subsequently elect market regulation.

II.

BTES' initial CCN was conditioned in two respects. First, the geographic limitation was a self-imposed limitation, which restricted BTES to providing services only within its electric service footprint. The requirements of Section 201 could have been considered in a statewide application proceeding at that time. To permit BTES to now obtain broader authority without a review of its financial, managerial and technical ability to service this dramatically expanded territory eliminates the consideration of the requirements of Section 201. Second, the Authority imposed a requirement for annual filing of comprehensive financial information and audit records to ensure continued compliance with other statutory, financial requirements, which demonstrates concern regarding continued financial capability. Nothing in Public Chapter No. 61 addresses or otherwise diminishes these statutory requirements, nor does this legislation remove the Authority's jurisdiction over ensuring compliance with these statutory requirements.

The TCTA specifically objects to consideration of the quotes of the legislative record filed by BTES. The Authority should not look beyond the plain language of the statute to determine its meaning. Cunningham v. Williamson Cnty. Hosp. Dist., 2013 WL 1912611. If it were the legislative intent to remove the requirement to obtain and maintain a CCN from

the Authority for any market-regulated entity, as suggested by the other parties, it would have been very simple for the legislation to read “none of the requirements of Section 65-4-201 shall apply to any market regulated entity.” The language of Section 4 of Public Chapter No. 61 eliminates the Authority’s ability to impose requirements relating to the issuance and maintenance of a CCN; this language specifically presumes that the Authority will still be considering and issuing CCNs for market-regulated entities. As such, the requirements of Section 201 remain in force: an entity must apply for a CCN and prove sufficient financial, managerial and technical expertise to conduct the business for which the application is being made, although the order granting the CCN under Public Chapter No. 61 could not impose any requirements or conditions to be applied prospectively on the applicant.

There is only ambiguity in Public Chapter No. 61 if the interpretation of the other Parties is applied. The act’s clear meaning, as it amends Tenn. Code Ann. Section 65-5-109, must be consistent with the interpretation that gives effect to the provisions of 65-4-201. These statutory provisions of general application must be read together. Courts will presume the general assembly was aware of the existence of other state laws when it enacts legislation and presume an act does not intend to render another statute useless unless such intent is expressed or the other statute is repealed. Cunningham v. Williamson Cnty. Hosp. Dist., 2013 WL 1912611.

III.

The other Parties’ interpretation of Public Chapter No. 61 would lead to unreasonable results. It is unreasonable to assume that an “affiliate” of a market-regulated company should be granted a CCN without the benefit of an approved application pursuant

to Section 201. The term “affiliate” is not defined in Public Chapter No. 61. In theory, an entity seeking to compete in the telecommunications industry in Tennessee could simply sell an insignificant portion of its ownership to a market-regulated entity and circumvent the CCN process altogether. Such a circumstance is contrary to public policy and the broad grant of jurisdiction granted to the TRA pursuant to Section 201.

BTES’ interpretation of Public Chapter No. 61 would allow an entity to file a petition for a CCN for a geographically limited area, knowing it is without sufficient financial, managerial and technical expertise on a statewide level. Once the CCN was granted, that entity could then simply make the market regulation election and give notice of its expansion to operate statewide with no further review by the Authority. Accordingly, TCTA respectfully requests the Authority hear the application of BTES for an amendment to expand its CCN on the merits, as required by Tenn. Code Ann. Section 65-4-201.

Respectfully submitted,

A handwritten signature in black ink, reading "Charles B. Welch, Jr.", written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded to the following on this the 28th day of May, 2013 by the means noted below.

Mark Smith
Miller & Martin
832 Georgia Avenue, Suite 1000
Chattanooga, TN 37402

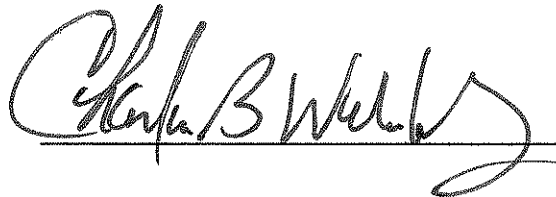
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Via e-mail

A handwritten signature in black ink, appearing to read "Charles B. Wilk", is written over a horizontal line.