

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

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

**REPLY OF BRISTOL TENNESSEE ESSENTIAL SERVICES TO LATE-FILED
RESPONSE OF TENNESSEE CABLE TELECOMMUNICATIONS ASSOCIATION**

In accordance with the Hearing Officer's May 29, 2013 Notice in this docket, Bristol Tennessee Essential Services ("BTES") respectfully submits this reply to the *Response to Motion of Bristol Tennessee Essential Services to Dismiss Petition Based Upon A Change of Law and CenturyLink's Petition for Declaratory Ruling* dated May 28, 2013 (the "*TCTA Response*"). In the *TCTA Response*, TCTA reverses its own prior position concerning the jurisdiction of the Tennessee Regulatory Authority ("TRA") under Tenn. Code Ann. § 65-4-201 after the Tennessee General Assembly's passage of Chapter 61 of the Public Acts of 2013 ("Chapter 61")¹ to require BTES to obtain an amended certificate of convenience and necessity (or "CCN").

The TRA should reject the arguments set forth in the *TCTA Response*, should affirmatively declare that under Public Chapter No. 61, the Tennessee General Assembly relieved BTES and other market-regulated providers from any requirement to request that the TRA issue any additional CCNs under Tenn. Code Ann. § 65-4-201, and should affirm that BTES can withdraw its pending Petition based upon this change of law.

¹ A copy of Chapter 61 is available at <http://state.tn.us/sos/acts/108/pub/pc0061.pdf>.

In the *CenturyLink Response and Petition for Declaratory Ruling* (“*CenturyLink Response and Petition*”), CenturyLink admitted “[w]ith regard to BTES’s motion to dismiss, CenturyLink agrees that BTES’s petition for an amended certificate is no longer necessary after the effective date of [Chapter 61].” By letter dated April 11, 2013, TCTA adopted the *CenturyLink Response and Petition* in its entirety, stating “we agree with and adopt the arguments contained in the brief submitted by CenturyLink.” In the *TCTA Response*, however, TCTA subsequently changed its position and now contends that the TRA must issue an amended CCN to BTES under Tenn. Code Ann. § 65-4-201 before BTES can provide jurisdictional telecommunications services outside of its electric system footprint. TCTA’s earlier admission was correct, and the TRA should reject TCTA’s new argument.

In making its new argument, TCTA seems to completely ignore the clear language of Section 3 of Chapter 61, which affirmatively deleted the language of Tenn. Code Ann. § 65-5-109(n)(12). As originally enacted, the Market Regulation Act of 2009 expressly provided subject matter jurisdiction to the TRA when “[the TRA] is exercising jurisdiction respecting the requirement of certificates pursuant to § 65-4-201,” and this jurisdiction was codified at Tenn. Code Ann. § 65-5-109(n)(12). Section 3 of Chapter 61, in turn, deleted Tenn. Code Ann. § 65-5-109(n)(12) in its entirety. The Tennessee General Assembly could not have been more clear when it removed the TRA’s subject matter jurisdiction to require a market-regulated provider to obtain a certificate under Tenn. Code Ann. § 65-4-201. In the face of the plain language of Section 3 of Chapter 61, TCTA’s argument is flatly incorrect when TCTA contends that “the requirements of Section 201 remain in force”² in the case of a market-regulated provider.

Moreover, the plain language of Section 4 of Chapter 61 requires the same result. In Section 4 of Chapter 61, the Tennessee General Assembly provided that “[the TRA] shall not

² *TCTA Response* at p. 3.

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.” In spite of this unambiguous language, TCTA requests that the TRA “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.”³ In other words, TCTA contends that the TRA must issue an expanded CCN before BTES can provide service outside of its original service area. Clearly, TCTA’s strained position cannot survive the application of the plain language of Section 4 of Chapter 61.

Section 3 and Section 4 of Chapter 61 definitively, clearly and unambiguously address all issues in this Docket in BTES’ favor.⁴ In Section 3, the Tennessee General Assembly removed the TRA’s jurisdiction over the requirement of certificates for market regulated companies like BTES. In Section 4, the Tennessee General Assembly provided that the TRA “shall not impose any requirements relating to issuance or maintenance of a certificate pursuant to § 65-4-201 on any market-regulated entity. . . .” Contrary to TCTA’s position, this language does not presume that the TRA will still be considering and issuing CCNs for market-regulated entities. And contrary to TCTA’s position, the plain language of Chapter 61 is not in any way limited to prospective requirements or conditions on market regulated carriers.⁵ The plain language of Chapter 61 language prohibits the TRA from imposing any requirements pursuant to Tenn. Code Ann. § 65-4-201 on any market-regulated company, of which BTES is undisputedly one.

³ *TCTA Response* at p. 2.

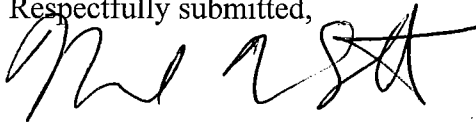
⁴ BTES has previously asserted that the original Market Regulation Act of 2009 provides that market-regulated providers like BTES are “exempt from all [TRA] jurisdiction” except as provided in Tenn. Code Ann. § 65-5-109(m) & (n), and further provides subject matter jurisdiction “only when” the TRA is acting pursuant to Tenn. Code Ann. § 65-5-109(m) & (n). BTES submits that the plain language of Chapter 61 fully addresses the matters set forth in the *TCTA Response*, but BTES continues to preserve this argument concerning the subject matter jurisdiction of the TRA.

⁵ *TCTA Response* at p. 3.

CONCLUSION

In the *TCTA Response*, TCTA asserts an erroneous position that contradicts the plain language of Chapter 61. With the passage of Chapter 61, the Tennessee General Assembly removed the TRA's jurisdiction over the requirement of certificates for market-regulated providers like BTES and prohibited the TRA from imposing any requirements relating to the issuance or maintenance of a certificate pursuant to Tenn. Code Ann. § 65-4-201. The TRA should reject TCTA's request that the TRA hear the original Petition of BTES on the merits and should instead declare that BTES' Petition is no longer necessary in light of the passage of Chapter 61.

Respectfully submitted,



Mark W. Smith
MILLER & MARTIN PLLC
832 Georgia Avenue, Suite 1000
Chattanooga, Tennessee 37402
Telephone: (423) 785-8357
Facsimile: (423) 321-1527

C. THOMAS DAVENPORT, JR.
640 State Street
Bristol, Tennessee 37620
Telephone: (423) 989-6500

Attorneys for: Bristol Tennessee Essential Services

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy has been forwarded to the following on this the 5th day of June, 2013 by the means noted below.

Charles B. Welch, Jr., Esq.
Farris Bobango, PLC
618 Church Street, Suite 3000
Nashville, Tennessee 37219

Via e-mail

Zsuzsanna E. Benedek, Esq.
Senior Attorney
CenturyLink
240 North Third Street, Suite 300
Harrisburg, Pennsylvania 17101

Via e-mail

Misty Smith Kelley, Esq.
Baker, Donelson, Bearman, Caldwell &
Berkowitz, PC
1800 Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450

Via e-mail

