

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 30, 2012

IN RE:

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APPLICATION OF BRISTOL TENNESSEE ESSENTIAL)	DOCKET NO.
SERVICES FOR EXPANDED CERTIFICATE OF PUBLIC)	12-00060
CONVENIENCE AND NECESSITY TO PROVIDE)	
COMPETING TELECOMMUNICATIONS SERVICES)	
STATEWIDE)	

ORDER ON AUGUST 20, 2012 STATUS CONFERENCE

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (“TRA” or the “Authority”) during a Status Conference held on August 20, 2012, to consider any pending requests for intervention, the entry of a Protective Order, and to establish a procedural schedule to completion.

RELEVANT BACKGROUND

In its Order of March 21, 2006, issued in Docket No. 05-00251, the Authority granted, subject to certain conditions, the application of Bristol Tennessee Essential Services (“BTES” or “Applicant Company”) to provide telecommunications services within Sullivan County, Tennessee.¹ During the hearing on the application, BTES was permitted to amend its application to incorporate the terms and conditions set forth in a settlement agreement that had been reached between BTES and United Telephone-Southeast, Inc.² On June 20, 2012, BTES filed in this

¹ See in re: *Application of Bristol Tennessee Essential Services for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services*, Docket No. 05-00251, *Order Approving Application for Certificate of Public Convenience and Necessity* (March 21, 2006).

² See in re: *Application of Bristol Tennessee Essential Services for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services*, Docket No. 05-00251, *Joint Motion of Bristol Tennessee Essential Services and United Telephone-Southeast, Inc. to Approve Settlement Agreement* (February 27, 2006) and

docket an *Application of Bristol Tennessee Essential Services for Expanded Certificate of Public Convenience and Necessity to Provide Competing Telecommunications Services Statewide* (“*Application*”) seeking expanded authority to provide telecommunications services on a statewide basis.

On July 31, 2012, United Telephone-Southeast LLC d/b/a CenturyLink, CenturyLink 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”) filed a petition to intervene in the docket file.³ On August 13, 2012, the Hearing Officer issued a *Notice of Status Conference* setting a Status Conference with the parties immediately following the Authority Conference on August 20, 2012. On August 16, 2012, the Tennessee Cable Telecommunications Association (“TCTA”) filed its petition requesting intervention in the docket file.⁴

AUGUST 20, 2012 STATUS CONFERENCE

The Status Conference began as noticed immediately following the conclusion of the Authority Conference in the Hearing Room on the Ground Floor of the Tennessee Regulatory Authority at 460 James Robertson Parkway, Nashville, Tennessee. The parties in attendance were as follows:

For BTES:

Mark W. Smith, Esq., Miller & Martin PLLC, 832 Georgia Avenue, Chattanooga, Tennessee 37402;

For CenturyLink:

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

Corrected Page Two of the Settlement Agreement (May 16, 2006); *see also*, Docket No. 05-00251, Transcript of Proceedings, pp. 4-5 (March 6, 2006).

³ *Petition to Intervene of CenturyLink* (July 31, 2012).

⁴ *Petition to Intervene of Tennessee Cable Telecommunications [sic] Association* (August 16, 2012).

For TCTA:

Charles B. Welch, Jr., Esq., Farris Mathews Bobango, PLC, 618 Church Street, Suite 300, Nashville, Tennessee 37219.

PETITIONS TO INTERVENE

CenturyLink

CenturyLink is an incumbent local exchange carrier regulated by the Authority that provides telecommunications services in portions of the state of Tennessee. In its petition to intervene, CenturyLink asserts that it has a direct and tangible interest in ensuring its ability to compete is not unfairly and unlawfully compromised and that the telecommunications marketplace in Tennessee is not adversely impacted.⁵ To that end, CenturyLink asserts that the imposition of certain conditions and competitive safeguards may be necessary.⁶ CenturyLink further asserts that, at a minimum, discovery is needed to determine the accuracy and completeness of BTES' application and the conformity of its actions with the terms and conditions of the CCN granted it in 2006.⁷

TCTA

TCTA is a trade organization whose membership consists primarily of owners and operators of franchised cable television systems throughout the state of Tennessee, some of whom hold a certificate of convenience and necessity to provide telecommunications and are regulated by the TRA. In its petition to intervene, TCTA asserts that, as a municipally-owned electric utility authorized to provide telecommunications services, BTES is subject to certain requirements designed to promote fair competition and prevent anti-competitive practices under Tenn. Code Ann. § 7-52-401, *et seq.*⁸ Further, TCTA asserts that the implementation of such

⁵ *Petition to Intervene of CenturyLink*, ¶ 8 (July 31, 2012).

⁶ *Id.*

⁷ *Id.*

⁸ *Petition to Intervene of Tennessee Cable Telecommunications [sic] Association*, ¶ 3 (August 16, 2012).

competitive safeguards is essential to the furtherance of fair competition. TCTA asserts that it has a direct and substantial interest in the manner and method in which BTES will be required to comply with the applicable law, and that these interests may be affected or determined by the outcome of this proceeding.⁹

Findings & Conclusions

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if:

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.¹⁰

Under TRA Rule 1220-1-2-.06, any party opposing a motion in a contested case must file and serve a response to the motion within seven days of service of the motion.¹¹

During the Status Conference, the Hearing Officer opened for discussion the petitions for intervention filed in the docket by CenturyLink and TCTA. The Company did not file a response in the docket file and stated during the Status Conference that it, in fact, did not object to the intervention requests. Thereafter, the Hearing Officer found that the legal rights, duties, privileges, immunities or other legal interests of CenturyLink and TCTA may be determined in the docket, the petitions were timely, and the interests of justice and the orderly and prompt

⁹ *Id.* at ¶ 4.

¹⁰ Tenn. Code Ann. § 4-5-310(a) (2011).

¹¹ Tenn. R. & Regs. 1220-1-2-.06.

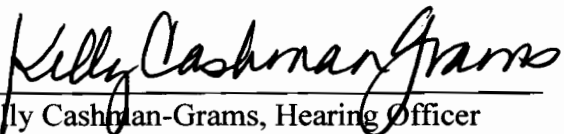
conduct of these proceedings will not be impaired by granting the intervention requests. For the above reasons, and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the petitions to intervene filed by CenturyLink and TCTA.

PROTECTIVE ORDER & PROCEDURAL SCHEDULE

In light of the fact that the parties had not yet had an opportunity to discuss and reach agreement concerning the parameters of a protective order and procedural schedule, the Hearing Officer, with the agreement of the parties, set August 27, 2012 as the deadline by which the parties would file a proposed protective order and proposed procedural schedule for the Hearing Officer's consideration.

IT IS THEREFORE ORDERED THAT:

1. United Telephone-Southeast LLC d/b/a CenturyLink, CenturyLink 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, and the Tennessee Cable Telecommunications Association are hereby granted leave to intervene. As intervenors, these parties may participate in this proceeding as their interests require and receive copies of any notices, orders or other documents filed herein.
2. The parties shall file a proposed protective order and proposed procedural schedule for consideration of the Hearing Officer by **August 27, 2012**.



Kelly Cashman-Grams, Hearing Officer