

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
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January 22, 2015

Hon. Herbert H. Hilliard, Chairman
Tennessee Regulatory Authority
502 Deaderick Street, 4th Floor
Nashville, TN 37243

In Re: Show Cause Proceeding Against Laurel Hills Condominiums Property Owners Association for Alleged Violations of Tenn. Code Ann. 65-4-201, 65-4-301(A), 65-5-102, 65-4-101, And/Or 65-4-103, And 65-4-115, Docket No. 12-00077.

Dear Chairman Hilliard:

Enclosed are an original and five (5) copies of the Request of the Consumer Advocate to File a Reply to Respondent's Opposition to Consumer Advocate's Petition to Intervene.

The Consumer Advocate also submits as an attachment to the Request an original and five (5) copies of its Reply of the Consumer Advocate to Respondent's Opposition to Consumer Advocate's Petition to Intervene both in support of its Request and to assist the Authority in a timely resolution of this matter should it grant the Consumer Advocate's Request.

These documents are being sent electronically this same date and to the parties of record. Kindly file in the above-referenced docket. Thank you.

Best regards,

A handwritten signature in blue ink that reads "Rachel Newton".

Rachel Newton
Assistant Attorney General

Enclosures:

cc: Shiva Bozarth, Esq.
Benjamin Gastel, Esq.
Melanie Davis, Esq.

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
SHOW CAUSE PROCEEDING)	
AGAINST LAUREL HILLS)	
CONDOMINIUMS PROPERTY OWNERS)	DOCKET NO.
ASSOCIATION FOR ALLEGED)	12-00077
VIOLATIONS OF TENN. CODE ANN.)	
65-4-201, 65-4-301(A), 65-5-102, 65-4-101)	
AND/OR 65-4-103, AND 65-4-115)	

**REQUEST OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
TO FILE A REPLY TO RESPONDENT LAUREL HILLS' OPPOSITION
TO CONSUMER ADVOCATE'S PETITION TO INTERVENE**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate"), and requests leave from the Tennessee Regulatory Authority ("TRA" or "Authority") to file a Reply to the Respondent Laurel Hills' Opposition to the Consumer Advocate Division's Petition to Intervene ("Opposition").

The Authority's rules allow for a reply to a response pursuant to Tenn. Comp. R. & Regs. § 1220-1-2.06(3). The Consumer Advocate believes that a reply would be helpful to the Authority in determining the status of its Petition to Intervene because significant legal issues concerning the Consumer Advocate's duties and responsibilities have been raised by the Respondent in its Opposition. Recently, the Consumer Advocate was granted leave by the Authority to file a reply in the matter of *In Re: Show Cause Proceeding Against King's Chapel Capacity, LLC, For Alleged*

Violations Of Wastewater Utility Laws & TRA Rules, Docket No. 14-00007. Because this Docket No. 12-00077 involves similar issues with respect to the Consumer Advocate's duty and authority to intervene, a reply is warranted. In support of its Request, the Consumer Advocate hereby submits its proposed Reply to Respondent's Opposition.

Respectfully submitted,



RACHEL A. NEWTON (BPR #022960)
Assistant Attorney General
Consumer Advocate and Protection Division
P.O. BOX 20207
Nashville, Tennessee 37202-0207
(615) 741-8727
(615) 741-1026 – FAX
Rachel.Newton@ag.tn.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served
via U.S. Mail or electronic mail upon:

Benjamin Gastel, Esq.
Branstetter, Stranch, & Jennings
227 Second Avenue N
Fourth Floor
Nashville, TN 37201
Attorney for Laurel Hills Property Condominium Owners Association

Shiva Bozarth, Esq.
Chief of Compliance
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Melanie Davis, Esq.
Kizer & Black
329 Cates Street
Maryville, TN 37801-4903

This the 22 day of Jan, 2015.


Rachel A. Newton

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
)	
SHOW CAUSE PROCEEDING)	
AGAINST LAUREL HILLS)	
CONDOMINIUMS PROPERTY OWNERS)	DOCKET NO.
ASSOCIATION FOR ALLEGED)	12-00077
VIOLATIONS OF TENN. CODE ANN.)	
65-4-201, 65-4-301(A), 65-5-102, 65-4-101)	
AND/OR 65-4-103, AND 65-4-115)	

**REPLY OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION
OF THE ATTORNEY GENERAL'S OFFICE
TO RESPONDENT LAUREL HILLS' OBJECTION TO PETITION TO INTERVENE**

Comes now the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office ("Consumer Advocate") and files this Reply to the Respondent's Opposition to the Consumer Advocate Division's Petition to Intervene ("Opposition"). In support of its Petition to Intervene and in response to the Opposition of Laurel Hills Condominiums Property Owners Association ("Laurel Hills"), the Consumer Advocate submits the following:

1. Consumers Have A Clear Interest In This Docket, And Laurel Hills Has Been Properly Notified Of The Necessity For The Consumer Advocate's Intervention In This Contested Case Proceeding.

The Consumer Advocate maintains that consumers have a specific interest in this proceeding and that it has properly given notice to Laurel Hills as to why Consumer Advocate intervention is necessary. In its Petition to Intervene, the Consumer Advocate noted that the alleged violations of the law by Laurel Hills "directly affect the interests and rights of customers of Laurel Hills in this proceeding,

particularly charging unauthorized rates and withholding service.” Petition to Intervene at ¶ 11. The Consumer Advocate also noted the particular facts that led to the conclusion that consumers have an interest in this docket, namely the allegations set forth in the *Order Requiring Laurel Hills Condominiums Property Owners Association to Appear and Show Cause Why a Cease and Desist Order and Civil Penalties and Sanctions Should Not Be Imposed Against It for Violations of State Law* (“Show Cause Order”) issued on July 17, 2012. *Id.* at ¶ 10. Also, the Consumer Advocate noted the legal bases for intervention under both its enabling statute, Tenn. Code Ann. § 65-4-118, and the provisions governing intervention under the Uniform Administrative Procedures Act (“UAPA”), Tenn. Code Ann § 4-5-310. Thus, the Petition to Intervene outlines the consumer interest in this proceeding from both legal and factual perspectives.

Although the Consumer Advocate contends that its Petition to Intervene is sufficiently detailed, a petition to intervene need not be exhaustive or overly detailed in order to be granted; it need only set forth the interests of the parties in a manner that is sufficient for the hearing officer to make a determination.¹ The Authority has granted intervention to the Consumer Advocate and other parties whose petitions to intervene contained less detail than the Consumer Advocate’s Petition to Intervene in this docket. As examples, petitions to intervene and orders granting the petitions

¹ See Tenn. Code Ann. § 4-5-310, which requires only that the petition state “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 law.” The Consumer Advocate’s enabling statute, Tenn. Code Ann. § 65-4-118, does not place any requirements on the petition to intervene.

for the following dockets are attached as EXHIBIT 1: *In Re Complaint of US LEC of Tennessee, Inc., Against Electric Power Board of Chattanooga*, Docket No. 02-00562; *In Re Tennessee Wastewater Service, Inc., Petition to For Rate Increase*, Docket No. 09-00017; *In Re Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b)*, Docket No. 08-00192.

The Consumer Advocate has the duty and authority to represent the interests of Tennessee consumers of public utility services. Tenn. Code Ann. § 65-4-118. The Consumer Advocate, with the permission of the Attorney General and Reporter, is fully authorized to “participate or intervene as a party in any matter or proceeding before the [A]uthority or any other administrative, legislative, or judicial body” in accordance with the UAPA and Authority rules. *Id.* § 65-4-118(b)(1). The statute places no limitations on the Consumer Advocate’s participation.

This show cause docket affects not only the legal rights of Laurel Hills but also its customers. If a utility engages in wrongdoing of the type alleged by TRA Party Staff, the consumer interest is necessarily implicated. There is nothing speculative about the Consumer Advocate’s duty to represent the consumers who have potentially been harmed by Laurel Hills. Charging unauthorized rates and refusing to provide service to customers are clearly matters of interest to consumers, not just issues between the TRA and Laurel Hills. Therefore it is proper for the Consumer Advocate to intervene in this matter because its enabling statute gives it the authority to represent the interests of Tennessee consumers of public utilities services. By not

intervening in this matter, the Consumer Advocate might even be viewed as abrogating its responsibility under the law.

The consumer advocate division has the duty and authority to represent the interests of Tennessee consumers of public utilities services. The division may, with the approval of the attorney general and reporter, participate or intervene as a party in any matter or proceeding before the authority or any other administrative, legislative or judicial body and initiate such proceeding, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, and the rules of the authority.

Tenn. Code Ann. § 65-4-118(b)(1). The word “may” in this statute confers discretion on the Attorney General to determine the proceedings in which the Consumer Advocate should participate. The Attorney General has given his approval to intervene into this docket. It has been argued in other proceedings before the Authority that the “may” in this statute is permissive with respect to the TRA, but the structure of the statute does not support this position. In terms of statutory construction, the only other word that could be substituted for “may” would be “shall,” which would have demanded that the Consumer Advocate intervene in all proceedings before the Authority if it received approval from the Attorney General to do so. The permissive aspect of the statute refers to the discretion of the Attorney General, not other parties or agencies.

Without intervention, the Consumer Advocate would not be able to fully participate in these proceedings or be able to appeal a decision of the Authority that it believes is adverse to consumers, nor would it be able to represent consumer interests if Laurel Hills were to appeal a decision of the Authority. Therefore, in denying the Consumer Advocate its Petition to Intervene, the TRA would be denying

a voice to the very consumers affected in this proceeding and who the Consumer Advocate has the statutory duty and authority to represent.

The need for representation of Consumer Advocate interests has recently been demonstrated by settlement agreements or attempts at resolution that were entered into by TRA Party Staff and the respondent utility, but were rejected by the Authority. For example, in the matter of *In Re Show Cause Proceeding Against Tennessee Wastewater Systems, Inc., For Material Non-Compliance And/Or Violation of Tenn. R. 1220-04-13, et seq.*, (“TWSI Show Cause”), Docket No. 14-00041, the TRA Party Staff did not call for the revocation of a utility’s Certificate of Convenience and Necessity (“CCN”), but instead attempted its own resolution of the case. The attempted resolution was rejected by the Authority panel.²

Similarly, in *In Re Investigation As To Whether A Show Cause Order Should Be Issued Against Berry’s Chapel Utility, Inc., And/Or Lynwood Utility Corporation For Violation Of TRA Rule And Tennessee Statutes, Including But Not Limited To, Tenn. Code Ann. §§ 65-4-112, 65-4-113, 65-4-201, And 65-5-101* (“Berry’s Chapel Show Cause”), Docket No. 11-00065, the TRA Party Staff and the utility entered into a settlement agreement opposed by the Consumer Advocate. The TRA panel then did not accept the settlement.³ These cases demonstrate the importance of Consumer Advocate participation when consumer interests are at stake. However, by citing

² See *Order Revoking Tennessee Wastewater Systems, Inc.’s Amendment to Its Certificate of Convenience and Necessity For A Portion of Campbell County Known As Villages At Norris Lake*, August 11, 2014.

³ See *Transcript of Authority Conference*, November 25, 2013.

these cases, the Consumer Advocate stresses that it is not criticizing the TRA Directors, Advisory Staff, or Party Staff.

2. Laurel Hills' Specific Objections Are Insufficient To Deny the Consumer Advocate's Petition To Intervene.

In its Opposition to the Consumer Advocate's Petition to Intervene, Laurel Hills cites a section of Tenn. Code Ann. § 65-2-106 in support of its position that the Consumer Advocate should not be allowed to intervene. Opposition at ¶ 3. Laurel Hills contends that "only one party: the Respondent" is contemplated in this show cause proceeding because the TRA "functionally acts as a prosecutor of this civil enforcement proceeding and no other entity can assume that role." *Id.* Laurel Hills claims that its position is "consistent with Tennessee law on similar enforcement actions brought by other agencies." *Id.* at ¶ 4. In support of this argument, Laurel Hills cites *State v. Brown and Williamson Tobacco Corp.* 18 S.W.3d 186 (Tenn. 2000).

The show cause statute, Tenn. Code Ann. § 65-2-106, expressly provides that "show cause proceedings shall otherwise follow the provisions of this chapter with reference to contested cases" and Tenn. Code Ann. § 65-2-107 expressly contemplates intervention in contested cases. Intervention in contested cases is also allowed under the UAPA, at Tenn. Code Ann. § 4-5-310, and by the Consumer Advocate's enabling statute, Tenn. Code Ann. § 65-4-118.

The Consumer Advocate does not attempt to assume any role other than its statutorily defined role as a representative of the interests of consumers of public utility services in Tennessee. This show cause docket is a contested case proceeding governed by the UAPA, and labeling it a "civil enforcement action" does not make it

something other than what it is. Under the UAPA, the TRA is an administrative agency, not a law enforcement agency or other entity that is designed to bring actions outside the realm of the UAPA. The UAPA defines an agency as a “state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases.” The statute governing exemptions from the UAPA, Tenn. Code Ann. § 4-5-106, does not exclude the Authority or show cause proceedings.

Furthermore, the holding of *Brown and Williamson* does not apply to this proceeding. It is distinguishable from this show cause proceeding in several ways. First, the case in *Brown and Williamson* was an action brought by the State of Tennessee through the Attorney General in a chancery court, not an action initiated by an administrative agency that is subject to the UAPA. Furthermore, the substantive statutes giving rise to the suit in *Brown and Williamson* were the Tennessee Consumer Protection Act and the Tennessee Trade Practices Act. Actions under these statutes are not contested cases under the UAPA, and neither the State of Tennessee nor the Attorney General is an administrative agency as defined by the UAPA. Therefore, the holding of this case cannot be extended to apply to contested case proceedings before an administrative tribunal such as the TRA.

Consumer Advocate intervention will not impede Laurel Hills’ “full opportunity to defend the action” as contended by the Respondent. Opposition at ¶ 5. Laurel Hills provides no support for this statement other than its effort to characterize this proceeding as something other than a contested case. The Consumer

Advocate will not attempt to impede Laurel Hills' defense of the allegations brought by the TRA. In fact, the Consumer Advocate is very interested in hearing the responses to these allegations because they involve wrongdoing against customers of Laurel Hills, whose interests the Consumer Advocate has the statutory duty and authority to represent. Finally, as previously stated, the Consumer Advocate does not intend to file any discovery requests and will comply with all procedural schedules issued by the Authority.

For the reasons stated here and in the initial petition, the Consumer Advocate's Petition to Intervene should be granted.

Respectfully submitted,



RACHEL A. NEWTON (BPR #022960)
Assistant Attorney General
Consumer Advocate and Protection Division
P.O. BOX 20207
Nashville, Tennessee 37202-0207
(615) 741-8727
(615) 741-1026 – FAX
Rachel.Newton@ag.tn.gov

DATE: January 22, 2015

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply was served
via U.S. Mail or electronic mail upon:

Benjamin Gastel, Esq.
Branstetter, Stranch, & Jennings
227 Second Avenue N
Fourth Floor
Nashville, TN 37201
Attorney for Laurel Hills Property Condominium Owners Association

Shiva Bozarth, Esq.
Chief of Compliance
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Melanie Davis, Esq.
Kizer & Black
329 Cates Street
Maryville, TN 37801-4903

This the 22 day of Jan, 2015.


Rachel A. Newton

EXHIBIT

1

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: *Complaint of US LEC of Tennessee, Inc. against Electric Power Board of Chattanooga*

Docket No. 02-00562

PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.
FOR LEAVE TO INTERVENE

BellSouth Telecommunications, Inc., pursuant to T.C.A. §4-5-310 and T.C.A. §65-2-107, petitions the Tennessee Regulatory Authority (the "Authority") for leave to intervene in the above-captioned proceeding, and in support thereof states as follows:

1. Petitioner, a Georgia Corporation authorized to conduct and conducting a public utility business in the state of Tennessee, is engaged in furnishing exchange telephone service and intrastate (long distance) intraLATA telephone service in the state of Tennessee subject to the jurisdiction of the Authority and pursuant to T.C.A. §65-4-101 and T.C.A. §65-5-201, *et seq.*

2. Petitioner competes directly against the Electric Power Board of Chattanooga in Chattanooga and has an interest in this case.

3. Petitioner's legal interests may be determined in the proceedings and Petitioner's interests will not be adequately represented unless the Authority allows the Petitioner to intervene.

4. Allowing Petitioner to intervene will not impair the interests of justice or the orderly and prompt conduct of these proceedings.

5. Petitioner respectfully requests that it be granted leave to intervene and participate as a party in the above-captioned proceeding.

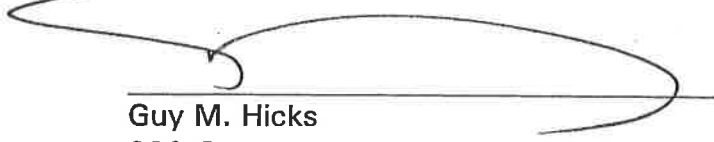
WHEREFORE, Petitioner prays:

1. That it be permitted to intervene in this proceeding and participate as a party.

2. That Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

BELL SOUTH TELECOMMUNICATIONS, INC.



Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

CERTIFICATE OF SERVICE

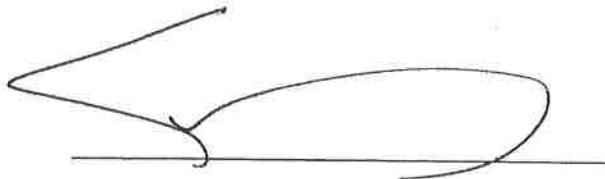
I hereby certify that on May 23, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Street, #1600
Nashville, TN 37219-8062

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

William C. Carriger, Esquire
Strang, Fletcher
One Union Sq., #400
Chattanooga, TN 37402

A handwritten signature in dark ink, appearing to be 'W.C. Carriger', written over a horizontal line.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 12, 2002

IN RE:

COMPLAINT OF US LEC OF TENNESSEE,
INC. AGAINST ELECTRIC POWER BOARD
OF CHATTANOOGA

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DOCKET NO.
02-00562

ORDER GRANTING PETITION OF BELL SOUTH
TELECOMMUNICATIONS, INC. FOR LEAVE TO INTERVENE

On May 23, 2002, BellSouth Telecommunications, Inc. ("BellSouth") filed the *Petition of BellSouth Telecommunications, Inc. for Leave to Intervene* (the "*Petition*") in this matter. According to the *Petition*, BellSouth furnishes exchange telephone service and intrastate intraLATA telephone service in Tennessee subject to the jurisdiction of the Tennessee Regulatory Authority. BellSouth states that it "competes directly against the Electric Power Board of Chattanooga in Chattanooga and has an interest in this case."¹ BellSouth further states that its "legal interests may be determined in the proceedings and [its] interests will not be adequately represented unless the Authority allows [it] to intervene."² No person has objected to BellSouth's *Petition*.

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

¹ *Petition of BellSouth Telecommunications, Inc. for Leave to Intervene*, May 23, 2002, p. 1.

² *Id.*

4-5-310. Intervention

(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 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.

The Hearing Officer finds that BellSouth's *Petition* complies with the requirements of Tenn. Code Ann. § 4-5-310. The interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

Pursuant to Tenn. Code Ann. § 4-5-310, BellSouth's *Petition* is granted.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc. is hereby given leave to intervene and receive copies of any notices, orders or other documents herein.


Jonathan N. Wike, Hearing Officer

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)
TENNESSEE WATER SERVICE, INC.) **DOCKET NO. 09-00017**
PETITION FOR RATE INCREASE)

PETITION TO INTERVENE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority (“TRA” or “Authority”) to convene a contested case and grant the Consumer Advocate’s intervention into this proceeding on behalf of the public interest because consumers may be adversely affected by the petition of Tennessee Water Service, Inc. (“Tennessee Water Service”) in which Tennessee Water Service is seeking a rate increase. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority Rules.

2. Tennessee Water Service is a public utility regulated by the Authority providing water service to approximately 564 customers in Sevier County Tennessee.

3. On January 30, 2009, Tennessee Water Service filed in the Authority a Petition of Tennessee Water Service, Inc. to Change and Increase Certain Rates and Charges. If the

Authority were to approve the petition of Tennessee Water service rates would be increased approximately 70%.

4. Additional investigation and discovery will be needed to determine whether such a rate increase is warranted.

5. Only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers.

WHEREFORE, Petitioner respectfully asks the Authority to convene a contested case proceeding and grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,

A handwritten signature in dark ink, appearing to read "R. E. Cooper, Jr.", is written over a horizontal line.

ROBERT E. COOPER, JR. (BPR #10934)
Attorney General and Reporter
State of Tennessee

Vance L. Broemel

VANCE L. BROEMEL (BPR #11421)
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-8733

March 2
Dated: February _____, 2009.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

Christopher J. Ayers
Hunton & Williams LLP
421 Fayetteville Street
Suite 1400
Raleigh, North Carolina 27601

J. Keith Coates
Woolf, McClane
P.O. Box 900
Knoxville, Tennessee 37901-0900

March 2
This the _____ day of February, 2009.

Vance L. Broemel
VANCE L. BROEMEL

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 6, 2009

IN RE:

PETITION OF TENNESSEE WATER SERVICES,
INC. TO CHANGE AND INCREASE CERTAIN
RATES AND CHARGES

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DOCKET NO.
09-00017

ORDER GRANTING APPLICATION TO APPEAR *PRO HAC VICE*,
GRANTING PETITION TO INTERVENE, AND
ESTABLISHING PROCEDURAL SCHEDULE

These matters came before the Hearing Officer at the April 14, 2009 Status Conference. Included with the Petition filed on January 30, 2009 are Christopher J. Ayers' *Application to Appear Pro Hac Vice* ("Application") and a letter of recommendation from J. Keith Coates, Jr., a member in good standing of the Tennessee Bar. Pursuant to Rule 19 of the Rules of the Supreme Court of Tennessee, TRA Rule 1220-1-2-.04(7) and for good cause shown, Mr. Ayers' Application is granted.

A *Petition to Intervene* ("Petition") by the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") was filed on March 2, 2009. No response to that Petition was filed, and Tennessee Water Services, Inc. ("TN Water") lodged no objection at the Status Conference, therefore the Hearing Officer granted the Consumer Advocate's *Petition to Intervene*, without objection.

Prior to the Status Conference, TN Water and the Consumer Advocate proposed to the Hearing Officer the following procedural schedule, which subject to limited modifications (below), is hereby approved and adopted:

May 6, 2009	First round of discovery requests ¹
June 3, 2009	Response to first round of discovery requests
June 24, 2009	Consumer Advocate Direct Testimony
July 8, 2009	TN Water Rebuttal Testimony
July 15, 2009	Pre-hearing Conference
July 29, 2009	Hearing on the Merits

The Pre-hearing Conference will be set by the Hearing Officer and the Hearing will be set by the panel; a specific notice will announce the precise dates and times. If a discovery dispute arises, the parties are admonished to attempt to resolve it, and if a resolution can not be reached, then a motion to compel shall be filed with the Authority, and the Hearing Officer shall resolve such dispute at a specially set status conference.

IT IS THEREFORE ORDERED THAT:

1. Christopher J. Ayers' *Application to Appear Pro Hac Vice* is granted.
2. The *Petition to Intervene* filed on March 2, 2009 by the Consumer Advocate is granted.
3. The procedural schedule is established as stated herein.
4. All filings are due no later than **2:00 p.m.** on the dates indicated in the procedural schedule. One copy of all discovery requests, objections and responses shall be filed with the Authority.



Gary Hotvedt, Hearing Officer

¹ If more than the allotted number of first round discovery requests as permitted by rule are served and filed, a motion for permission to exceed the allotment provided by rule shall accompany such request(s), and unless an objection is timely lodged, such motion will be deemed granted.

**IN THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE**

IN RE:)	
PETITION FOR REGULATORY)	
EXEMPTION PURSUANT TO T.C.A.)	DOCKET NO. 08-00192
§ 65-5-108(b) TO INCREASE REGULATORY)	
PARITY AND MODERNIZATION)	

PETITION TO INTERVENE

Robert E. Cooper, Jr., Attorney General and Reporter for the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118, respectfully petitions the Tennessee Regulatory Authority ("TRA" or "Authority") to convene a contested case and grant the Consumer Advocate's intervention into this proceeding on behalf of the public interest because consumers may be adversely affected by the petition of BellSouth Telecommunications, Inc. dba AT&T Tennessee ("AT&T") for regulatory exemption of virtually all telecommunication services for many Tennesseans. For cause, Petitioner would show as follows:

1. The Consumer Advocate is authorized by Tenn. Code Ann. § 65-4-118 to represent the interests of Tennessee consumers of public utilities services by initiating and intervening as a party in proceedings before the Authority in accordance with the Uniform Administrative Procedures Act and Authority rules.

2. AT&T is a public utility regulated by the Authority providing telephone and other services and products in Tennessee.

3. On October 9, 2008, AT&T filed in the Authority a Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization. If the Authority were to approve the petition of AT&T in its present form, residential customers in rate groups 3, 4, and 5, which consist of the most populated and developed areas of Tennessee, would lose the protection of regulation by the TRA of virtually all telecommunication services. In addition, all business services across the state would be deregulated.

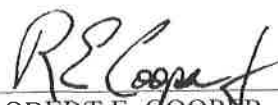
4. The Consumer Advocate alleges that the elimination of virtually all regulation for many Tennesseans may not be warranted and that there is no proof in the record of the benefits, if any, of such deregulation. If no proof beyond the unverified Petition as currently filed at the TRA is submitted, the TRA should deny the Petition.

5. Additional investigation and discovery will be needed to determine whether such deregulation is warranted and, if so, the appropriate extent of such deregulation.

6. Only by participating in this proceeding can the Consumer Advocate work adequately to protect the interests of consumers.

WHEREFORE, Petitioner respectfully asks the Authority to convene a contested case proceeding and grant the Petition to Intervene.

RESPECTFULLY SUBMITTED,


ROBERT E. COOPER, JR. (BPR #10934)
Attorney General and Reporter
State of Tennessee

Vance L. Broemel

VANCE L. BROEMEL (BPR #11421)
Assistant Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 741-8733

Dated: November 3rd, 2008.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Intervene was served via U.S. Mail or electronic mail upon:

Guy M. Hicks
AT&T Tennessee
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201

Paul F. Rice
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Nashville, TN 37219

Henry Walker
Boult, Cummings, Conners & Berry
Attorney for CompSouth and NuVox
1600 Division Street, Suite 700
Nashville, Tennessee 37203

This the 3rd day of November, 2008.

Vance L. Broemel

VANCE L. BROEMEL

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 4, 2008

IN RE:

**PETITION OF AT&T TENNESSEE FOR
REGULATORY EXEMPTION PURSUANT
TO T.C.A. 65-5-108(B) TO INCREASE
REGULATORY PARITY AND MODERNIZATION**

**DOCKET NO.
08-00192**

**ORDER GRANTING PETITIONS TO INTERVENE
AND ESTABLISHING A PRELIMINARY PROCEDURAL SCHEDULE**

At a regularly scheduled Authority Conference held on November 10, 2008, Director Eddie Roberson, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority ("Authority" or "TRA"), the panel assigned to this docket, voted unanimously to convene a contested case proceeding and to appoint General Counsel or his designee as Hearing Officer for the purpose of preparing this matter for hearing, including handling preliminary matters and establishing a procedural schedule to completion. This matter is before the Hearing Officer, upon filings by the parties, to consider petitions to intervene and to establish an issues list and a procedural schedule.

TRAVEL OF CASE

On October 9, 2008, BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T" or the "Company") filed its *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization* ("Petition") in which the Company seeks relief from the regulatory requirements in Part 1 of Tenn. Code Ann. Title

65, Chapter 5. AT&T alleges that the services it is seeking to exempt “are subject to overwhelming competition through both inter-modal technologies and also through traditional telecommunications technology.”¹

On October 22, 2008, a petition to intervene was filed by the Competitive Carriers of the South, Inc. (“CompSouth”). On October 23, 2008, petitions to intervene were filed by TW Telecom of Tennessee, LLC (“TW Telecom”) and Tennessee Internet Service Provider Association, Inc. (“Tennessee Internet”). NuVox Communications, Inc. (“NuVox”) filed a petition to intervene on October 24, 2008. On November 3, 2008, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a petition to intervene.

A *Notice of Status Conference* was issued on November 10, 2008, setting a Status Conference for Monday, November 24, 2008 to establish an issues list and a procedural schedule. The Notice provided that any interested party desiring to participate in the Status Conference should file a petition to intervene not later than November 17, 2008, and that petitions to intervene filed by that date would be considered at the Status Conference. The Notice also stated that the discovery between the parties and the issuance of a protective order would be matters for discussion during the Status Conference. On November 17, 2008, the Tennessee Cable Telecommunications Association (“TCTA”) filed a petition to intervene.

¹ *Petition for Regulatory Exemption Pursuant to T.C.A. § 65-5-108(b) to Increase Regulatory Parity and Modernization*, p. 7 (October 9, 2008).

STATUS CONFERENCE

The Status Conference was convened on November 24, 2008. In attendance at the Status Conference were the following parties represented by counsel:

AT&T – Guy Hicks, Esq. and Joelle Phillips, Esq., 333 Commerce Street, Nashville, TN 37201;

Consumer Advocate and Protection Division - Vance Broemel, Esq., Office of the Attorney General, 425 5th Ave. N, John Sevier Building, P.O. Box 20207, Nashville, TN 37202;

CompSouth and NuVox Communications – Henry M. Walker, Esq., Boulton, Cummings, Conners & Berry, PLC, 1600 Division Street, Suite 700, P.O. Box 340025, Nashville, TN 37203;

TW Telecom and TCTA – Charles B. Welch, Jr., Esq., Farris Mathews Bobango PLC, 618 Church Street, Suite 300, Nashville, TN 37219; and

Tennessee Internet – Paul F. Rice, Esq., P.O. Box 1692, Jackson, TN 38301.

Also participating in the Status Conference telephonically were Susan Berlin on behalf of NuVox and Doug Nelson on behalf of Sprint, which is a member of CompSouth.

Petitions to Intervene

At the outset of the Status Conference, the Hearing Officer addressed the petitions to intervene. 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.

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. No party or person filed an objection to or opposed the intervention requests in this docket.

Applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer granted the petitions of CompSouth, TW Telecom, Tennessee Internet, NuVox, TCTA and the Consumer Advocate.

Issues List

Because of the nature of this proceeding, the Hearing Officer proposed that the parties consider entering into stipulations as to those services for which there is no question that sufficient competition exists to exempt them from regulation. The parties agreed to pursue stipulations to remove certain services from consideration in this proceeding. A discussion then ensued regarding the formation of a list of issues for resolution in this docket. The Hearing Officer proposed that certain benchmarks or standards be established by which to measure whether services should be deregulated. Establishing these benchmarks at the commencement of this action would help frame the discovery and pre-filed testimony that will follow. After discussion, the Hearing Officer determined that the parties propose certain issues to be determined before moving forward with a complete procedural schedule. It was decided that AT&T will submit a list of proposed issues initially, after which the Intervenors would respond to AT&T's proposals and provide their lists of proposed issues. As a part of its filing, AT&T will propose a test that it would use in determining whether competition exists.²

² AT&T will also respond to the Hearing Officer's question regarding whether the requested exemption will have an impact on state universal service requirements.

Preliminary Procedural Schedule

After discussion with the parties, the Hearing Officer established the following preliminary procedural schedule for the entry of a protective order and the development of an issues list:

December 2, 2008	Parties to submit agreed Protective Order or submit separate proposed protective orders.
December 4, 2008	AT&T to file with the Authority a list of proposed issues and circulate to the Intervenor a list of proposed stipulations.
December 11, 2008	Intervenor to file with the Authority a list of proposed issues.
December 11, 2008	Parties to file with the Authority stipulations as to the deregulation of any services, rate groups or exchanges and customer classes.

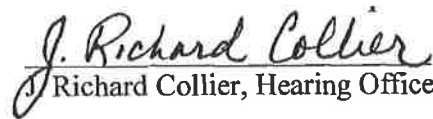
All filings with the Authority are due by 4:00 p.m. on the date of filing.

Protective Order

In addressing the entry of a Protective Order, AT&T stated that this case would involve a "substantial amount of competitively sensitive information." The Hearing Officer directed the parties to work together to submit an agreed protective order and suggested that the parties review protective orders entered in other TRA dockets to serve as a model. The parties agreed to submit a proposed protective order to the Hearing Officer or individually to submit proposed protective orders by December 2, 2008. On December 2, 2008, AT&T submitted a proposed protective order to which all parties except the Consumer Advocate have agreed. On December 3, 2008, the Consumer Advocate requested an opportunity to respond to the filing and comments made by AT&T on December 2, 2008. The Consumer Advocate further requested that its response be due on December 9, 2008.

IT IS THEREFORE ORDERED THAT:

1. CompSouth, TW Telecom, Tennessee Internet, NuVox, TCTA and the Consumer Advocate are granted leave to intervene and receive copies of any notices, orders or other documents herein.
2. The preliminary Procedural Schedule, set forth in this Order, is in full force and effect.
3. The Consumer Advocate shall respond by December 9, 2008 to AT&T's comments and the proposed protective order filed on December 2, 2008. Afterward, the Hearing Officer will proceed to enter a Protective Order.


Richard Collier, Hearing Officer