05-24-13

TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway
Nashville, Tennessee 37243-0505

NOTICE OF HEARING
In re Petition for Declaratory Ruling

Pursuant to Tennessee Code Annotated § 4-5-224, the Tennessee Regulatory Authority gives the following notice of hearing on a petition for declaratory ruling:

1. Docket Number and Style:

   In re: TRA Docket No. 12-00060
   Application of Bristol Tennessee Essential Services for Expanded Certificate of Public Convenience and Necessity to Provide Competing Telecommunications Services Statewide

2. Date, Time and Place of Hearing:

   A contested case hearing in the above matter has been scheduled before the Tennessee Regulatory Authority at **1:00 p.m. CDT on June 17, 2013,** in the Hearing Room located at 460 James Robertson Parkway, Nashville, Tennessee 37243.

3. Petitioner: 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")

4. Attorney for Petitioner: Misty Smith Kelley, Esq.
   Baker, Donelson, Bearman, Caldwell & Berkowitz, PC
   1800 Republic Centre
   633 Chestnut Street
   Chattanooga, Tennessee 37450
   Ph: (423) 209-4148

5. Summary of Relief Requested:

   Pursuant to Tenn. Code Ann. § 65-2-104, the Petitioner requests an order from the Tennessee Regulatory Authority declaring that:

   (1) Bristol Tennessee Essential Services of the City of Bristol, Tennessee, continues to be bound by the conditions of its existing Certificate of Public Convenience

and Necessity, which were established to ensure compliance with the anti-subsidy statutes set forth in Tenn. Code Ann. §§ 7-52-401 *et seq.*;

(2) The provisions of Public Chapter No. 61 (2013) (*see* SB 1180/HB 972; 2013 Pub. Acts, c. 61, §§ 2 to 4, eff. March 26, 2013) amending the Market Regulation Act of 2009 set forth within Tenn. Code Ann. § 65-5-109, have no impact on the Tennessee Regulatory Authority's original certificate jurisdiction under Tenn. Code Ann. § 65-4-201; and

(3) The Tennessee Regulatory Authority will continue to fulfill its long-established role of enforcing the anti-subsidy provisions applicable to municipal telecommunications providers under Tenn. Code Ann. §§ 7-52-401 *et seq.*

6. Statutes that the Tennessee Regulatory Authority is called upon to interpret or upon which it is to rule:

- **Tenn. Code Ann. § 65-4-201** states, *in pertinent part*:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate; provided, however, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line, or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it.

(b) Except as exempted by provisions of state or federal law, 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. . .

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable authority policies, rules and orders; and
(2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

- **Tenn. Code Ann. § 65-5-109, *a.k.a.*, the Market Regulation Act of 2009 (2010),** states, *in pertinent part*:

(*l*)(1) Any nonincumbent certificated provider of local exchange telephone or intrastate long distance telephone service or any incumbent certificated provider of local exchange or intrastate long distance telephone service that has elected price regulation pursuant to subsections (a)-(k) may, in its sole discretion, elect to operate pursuant to market regulation, by filing notice of its intent to do so with the authority, which shall be effective immediately upon filing.

(m) Upon election of market regulation by a certificated provider, the provider shall be exempt from all authority jurisdiction, including, but not limited to, state-based regulation of retail pricing or retail operations, except as defined in subsection (n). Notwithstanding the limitations on authority jurisdiction over market-regulated companies under state law as set forth in this section, it is the express intent of the general assembly that the Tennessee regulatory authority is authorized as a matter of state law to receive any jurisdiction delegated to it by the federal 1996 Telecommunications Act, in 47 U.S.C. § 214(e), or federal communications commission ("FCC") orders or rules, including, without limitation, jurisdiction granted to hear complaints regarding anti-competitive practices, to set rates, terms and conditions for access to unbundled network elements and to arbitrate and enforce interconnection agreements. In addition, the authority 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. The authority shall interpret and apply federal, not state, substantive law, which is hereby adopted so that such law is applicable to intrastate services for the purpose of adjudicating such state complaints. The authority shall adjudicate and enforce such claims in accordance with state procedural law and rules, including the enforcement and penalty provisions of § 65-4-120. No claim shall be brought to the Tennessee regulatory authority as to which the FCC has exclusive jurisdiction. All complaints brought between carriers pursuant to this section shall be resolved by final order of the authority within one hundred eighty (180) days of the filing of the complaint.

(n) A certificated provider electing market regulation shall be subject to the jurisdiction of the authority only when:
(1) The authority is exercising its jurisdiction as described in subsection (m);

* * *

(7) The authority is exercising jurisdiction respecting the Life Line or Link Up programs consistent with FCC rules, including, but not limited to, 47 CFR

54.403(a)(3) and relevant Tennessee public service commission orders on file with the authority as of January 1, 2009;

* * *

(9) The authority is responding to a specific customer complaint regarding a residential telecommunications service from the provider. In such cases, the authority may act using the powers available under the law as it existed January 1, 2009;

* * *

(12) The authority is exercising jurisdiction respecting the requirement of certificates pursuant to § 65-4-201;

- **2013 Pub. Acts, c. 61, §§ 2 to 4, eff. March 26, 2013** (amending Tenn. Code Ann. § 65-5-109, *a.k.a.,* the Market Regulation Act of 2009), states, *in pertinent part*:

SECTION 2. Tennessee Code Annotated, Section 65–5–109(n)(13), is amended by deleting the subdivision in its entirety and substituting instead the following:

(13) The authority is exercising jurisdiction respecting extensions of facilities pursuant to § 65–4–114(2), except that no market-regulated carrier shall be subject to the regulatory authority jurisdiction in this subdivision (n)(13) in any wire center or geographic area the carrier designates by filing notice of such designation with the regulatory authority. Such notice shall be effective immediately upon filing and not subject to regulatory authority review.

SECTION 3. Tennessee Code Annotated, Section 65–5–109(n)(7), (9) and (12), are amended by deleting the subdivisions in their entirety and redesignating existing subdivisions accordingly.

SECTION 4. Tennessee Code Annotated, Section 65–5–109, is amended by adding the following new appropriately designated subsections:

(u) * * * [omitted herein; section is not applicable to TRA review of noticed matter]

(v) 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.

- **Tenn. Code Ann. § 7-52-401,** states:

Every municipality operating an electric plant, whether pursuant to this chapter, any other public or private act or the provisions of the charter of the municipality, county or metropolitan government, has the power and is authorized, on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve,

operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant or equipment for the provision of telephone, telegraph, telecommunications services, or any other like system, plant, or equipment within or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality, in compliance with title 65, chapters 4 and 5, and all other applicable state and federal laws, rules and regulations. A municipality shall only be authorized to provide telephone, telegraph or telecommunications services through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant and equipment used to provide such services except upon compliance with the procedures set forth in § 7-52-132. 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 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, and shall be considered as and have the duties of a public utility, as defined in § 65-4-101, but only to the extent necessary to effect such regulation and only with respect to such municipality's provision of telephone, telegraph and communication services.

- **Tenn. Code Ann. § 7-52-402,** states, *in pertinent part:*

  A municipality providing any of the services authorized by § 7-52-401 shall not provide subsidies for such services.

Submitted for publication by:

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2013 MAY 31 PM 3:31
SECRETARY OF STATE

The Notice of Hearing on Petition for Declaratory Ruling set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 31st day of May, 2013.

By: Kelly Cashman Grams
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