

**Bills Related to Expansion or Restriction of Authority of Municipal  
Electric Systems to Provide Internet and Video Services**

102 <sup>nd</sup> General Assembly (2001-2002)	
Bill Number	Summary
<u>SB 0464 by Rochelle</u> <u>HB 1845 by Hargrove</u>	Includes specific issues for comptroller to address in preparing report to general assembly by June 30, 2005, evaluating operations of municipal electric systems offering cable television, internet, and related services. - Amends T.C.A. Title 7, Chapter 52.
<u>SB 0977 by Kyle</u> <u>HB 0191 by Rinks</u>	Authorizes certain municipalities operating electric plant to provide cable service within county in which municipality is located under certain circumstances. - Amends T.C.A. Section 7-52-601.
<u>SB 1818 by Clabough</u> <u>HB 1936 by Buck</u>	Requires joint ventures between municipality operating electric plant and other entity to provide cable, internet, and related services to be approved by referendum. Revises certain requirements of business plan municipal electric system files with office of comptroller of treasury. - Amends T.C.A. Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6.
<u>SB 1876 by Rochelle</u> <u>HB 1892 by Head</u>	Places one-year moratorium on municipal electric services from providing cable or internet service, two-way video transmission, or video programming, not already being provided, and on cooperatives from establishing cable joint venture, not already established, until report is received from comptroller with recommendation to expand, restrict, or terminate such services. - Amends T.C.A. Title 7, Chapter 52, Part 1; Title 7, Chapter 52, Part 6 and Title 65, Chapter 25, Part 2.
<u>SB 2543 by Kyle</u> <u>HB 2954 by Rinks</u>	Authorizes certain municipalities operating electric plant to provide cable service within county in which municipality is located under certain circumstances. House amendment 1 rewrites this bill to create a pilot program involving a municipal electric system providing cable, Internet or other like service throughout the county where the system is principally located. The comptroller of the treasury must choose the municipal system. The pilot program would be subject to the following: (1) The municipal electric system must receive a resolution from the legislative body of the county regarding service in unincorporated areas of the county, or any other municipalities in the county regarding service in such municipalities, requesting the system provide such service; and (2) The

	system must obtain the consent of each electric cooperative or other municipal electric system in whose territory the system will provide such services. This amendment would require the comptroller to report to the general assembly, no later than January 31, 2005, with recommendations regarding whether the pilot project should be continued or expanded to other systems. - Amends T.C.A. Section 7-52-601.
<u>SB 2983 by Clabough</u> <u>HB 3074 by Stanley</u>	Increases time before election that legislative body shall direct question of whether municipal electric system may provide additional services to be placed on ballot from not less than 60 days before general election to not less than 90 days before general election. - Amends T.C.A. Title 7, Chapter 52.
<b>103<sup>rd</sup> General Assembly (2003-2004)</b>	
<b>Bill Number</b>	<b>Summary</b>
<u>SB 0409 by Cooper, J.</u> <u>HB 1011 by Kent</u>	Requires joint ventures between municipality operating electric plant and any other entity to provide cable and internet services to be approved by referendum. Requires municipal electric system to provide evidence to the comptroller's office that it has provided a copy of the required business plan to all persons currently providing cable television service in the area in which the municipal electric system proposes to provide service. Adds provision requiring municipal electric system to submit a new business plan any time a material change has been made to the plan. - Amends T.C.A. Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6.
<u>SB 1571 by Cohen</u> <u>HB 1952 by McMillan</u>	Requires a joint venture between a municipality operating an electric plant and any other entity to provide cable or internet services to be approved by the municipal legislative body. Rewrites provisions relative to the business plan a municipal electric system must file with the comptroller. - Amends T.C.A. Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6.
<u>SB 1572 by Cohen</u> <u>HB 1953 by McMillan</u>	Requires joint venture between a municipality operating electric plant and other entity to provide cable and internet services to be approved by public referendum. Rewrites certain provisions regarding the business plan municipal electric system files with the comptroller. - Amends T.C.A. Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6.
<u>SB 1574 by Cohen</u> <u>HB 1907 by McMillan</u>	Municipal Government - Requires joint ventures between municipality operating electric plant and other entity to provide cable, Internet, and related services to be approved by municipal legislative body; revises requirements of business plan municipal electric system files with office of comptroller of treasury. - Amends T.C.A. Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6.
<u>SB 1573 by Cohen</u> <u>HB 1951 by McMillan</u>	Establishes a pilot project allowing one municipal electric system which already provides cable and internet services in a municipality to provide cable service within the county in which the municipality is located,

	under certain circumstances. - Amends T.C.A. Section 7-52-601.
<u>SB 2455 by Southerland</u> <u>HB 2435 by Litz</u>	Expands municipal electric plant pilot project to include one such project in each grand division of the state. The project authorizes municipal electric plants to provide cable service within their counties. House amendment 1 states that the comptroller shall expand the pilot project to include one municipal electric system located in the eastern grand division of the state. Requires the comptroller to select the municipal pilot project not later than August 1, 2004. Requires the comptroller to report to the general assembly by January 31, 2008, rather than 2006. States that there shall be no other municipal electric system selected to provide pilot project services until the comptroller issues recommendations. - Amends T.C.A. Section 7-52-601.
<b>104<sup>th</sup> General Assembly (2005-2006)</b>	
<b>Bill Number</b>	<b>Summary</b>
<u>SB 1760 by Person</u> <u>HB 1403 by Tindell</u>	Prohibits municipal electric systems from applying for or receiving authorization to provide cable services after June 30, 2005, until general assembly receives and considers comptroller's report evaluating operations of electric systems offering such services. House amendment 1 places a moratorium on municipal electric systems providing cable services until February 1, 2006. Specifies that municipal electric systems presently operating on the effective date of this act will not be subject to the requirements of this subsection. Grandfathers existing cable services provided by electric systems. Enacted as Public Chapter 362. - Amends T.C.A. Section 7-52-604.
<u>SB 3427 by Jackson</u> <u>HB 3534 by Fowlkes</u>	Allows each municipality operating an electric plant to enter into a business relationship with a third party to provide cable and related services. Senate amendment 1 makes clear that financing would have to go through local government such as the county commission. Senate amendment 2 specifies that the fiber optic network will be made available to the schools. Senate amendment 3 specifies that a municipality may not provide retail services to end use customers, pursuant to this subsection, in any area that is more than 50 miles beyond the outer perimeter of the service area of the municipality's electric system. Senate amendment 4 specifies that a municipality providing such services in any area that is outside the service area of the municipality's electric system shall also obtain the consent of each city or county in whose area the municipal electric system will provide such services, if such city or county does not require a franchise. - Amends T.C.A. Title 7, Chapter 52.
<u>SB 3514 by Norris</u> <u>HB 3569 by Jones, U.</u>	Limits a municipality's authorization to enter into a business relationship with a third party to provide cable, Internet, or related services to a joint venture. Requires disclosure of information related to such agreements to the comptroller and general assembly. Specifies that both a vote of a

	legislative body and a referendum would be necessary to approve the provision of cable and Internet services. - Amends T.C.A. Title 7, Chapter 52.
<b>105<sup>th</sup> General Assembly (2007-2008)</b>	
<b>Bill Number</b>	<b>Summary</b>
<u>SB 1277 by Burchett</u> <u>HB 1771 by Jones, U.</u>	Limits a municipality's authorization to enter into a business relationship with a third party to provide cable, Internet, or related services to a joint venture; requires disclosure of information related to such agreements; requires that both a vote of a legislative body and a referendum be held to approve the provision of cable and Internet services; and prohibits a municipal electric system from loaning funds to or subsidizing with revenues a division created to provide cable and Internet services. - Amends T.C.A. Title 7, Chapter 52.
<u>SB 1278 by Burchett</u>	Allows a municipal electric system to provide additional services when approved by a 2/3 vote of that municipality's legislature and a public referendum. Requires electric system have a separate division to provide cable television, internet, and related services. Prohibits use of pole attachments in exchange for monetary or in-kind compensation. Municipally owned utilities are required to allow pole attachments to any telegraph, telephone, or cable television provider meeting specifications of the law. Prohibits any municipality from granting any overlapping franchise for cable service within its jurisdiction unless such applicant receives approval by two thirds (2/3) majority vote of the legislative body of the municipality or county. - Amends T.C.A. Title 7, Chapter 52; Title 7, Chapter 59 and Title 65, Chapter 21.
<u>SB 1461 by Finney</u> <u>HB 0846 by Eldridge</u>	Reduces the area in which a cooperative is prohibited from providing services for telecommunications, cable and broadband. Current law prohibits areas in which another cooperative has 100,000 lines. This bill prohibits areas in which a cooperative has 75,000 lines. Broadly captioned. - Amends T.C.A. Title 7; Title 65 and Title 67.
<u>SB 1658 by Jackson</u> <u>HB 2105 by Maddox</u>	Allows municipalities that operate an electric plant to provide cable television, Internet, and related services. - Amends T.C.A. Title 7, Chapter 52.
<u>SB 1914 by Burchett</u> <u>HB 1458 by Tindell</u>	Removes provision by which municipalities operating electric plants may establish a business relationship with cable television and internet providers. Provides that a municipal electric system may provide additional services only after approval by a 2/3 majority vote of the legislative body of the municipality in which the municipal electric system is located and by a public referendum. Prohibits municipal electric system from lending funds to the separate entity that provides additional services under this section. Requires a detailed audit of the system to be filed with the comptroller. Requires municipally owned or cooperatively owned utility to allow pole attachments. Prohibits municipality or county

	from granting any overlapping franchise for cable service within its jurisdiction unless such applicant receives approval by 2/3 majority vote of the legislative body of the municipality or county. - Amends T.C.A. Title 7, Chapter 52; Title 7, Chapter 59 and Title 65, Chapter 21.
<u>SB 3375 by Jackson</u> <u>HB 3620 by Maddox</u>	Redefines "telecommunications" to mean all broadband and Internet services, cable services, two-way transmission of video, audio or written content, video programming or any other service for the transmission of intelligence. Expands the authority of municipalities and electric cooperatives to provide such telecommunications services. Senate Commerce amendment 1 rewrites Section 2 of the bill. Authorizes a cooperative to provide telecommunications within the service area of the cooperative. Specifies that if the service area of a telephone cooperative is coextensive with the service area of a cooperative, the cooperative may provide such services within its service area, under the following conditions: (1) services will be utilized primarily for the operation of the electric distribution system; (2) service consists of serving as a re-seller or wholesaler of band width owned or leased by the cooperative; or (3) service is provided over the cooperative's electric power lines. States that such provisions shall not contravene, negate or prohibit any arrangement between a cooperative and telephone cooperative. - Amends T.C.A. Title 7, Chapter 52 and Title 65, Chapter 25.
<b>106<sup>th</sup> General Assembly (2009-2010)</b>	
<b>Bill Number</b>	<b>Summary</b>
<u>SB 1098 by Stewart</u> <u>HB 1351 by Matheny</u>	Authorizes municipal electric plants to provide telephone, telegraph, telecommunications, cable service, two-way video transmission, video programming, Internet services, and other like systems beyond their service area to state and local governmental entities who request the service be provided. - Amends T.C.A. Title 7.
<u>SB 1099 by Stewart</u> <u>HB 1352 by Matheny</u>	As introduced, authorizes municipal electric systems to expand provision of broadband services. - Amends T.C.A. Title 7, Chapter 52.
<u>SB 1276 by Ketron</u> <u>HB 1957 by Tindell</u>	Specifies that that any municipal electric system that provides cable or Internet services is subject to regulation by the Tennessee regulatory authority. - Amends T.C.A. Title 7, Chapter 52, Part 6.
<u>SB 1941 by Southerland</u> <u>HB 1458 by Mumpower</u>	Authorizes a municipal electric system to obtain a state-issued certificate of franchise authority and to provide cable and internet services throughout area covered by the state issued certificate. - Amends TCA Title 7.
<u>SB 3582 by Ketron</u> <u>HB 3155 by Tindell</u>	As introduced, provides that any municipal electric system that provides cable or Internet services shall be subject to regulation by the Tennessee regulatory authority. - Amends T.C.A. Title 7, Chapter 52, Part 6.

<b>107<sup>th</sup> General Assembly (2011-2012)</b>	
<b>Bill Number</b>	<b>Summary</b>
<u>SB 0769 by Ketron</u> <u>HB 0990 by Todd</u>	As introduced, transfers regulatory authority over municipality operating electric plant that provides cable, video programming, Internet or similar services to Tennessee Regulatory Authority for such services.- Amends T.C.A. Title 7, Chapter 52, Part 6.
<u>SB 1495 by Southerland</u> <u>HB 1837 by Miller, D.</u>	Allows a municipal electric system to provide cable service, two-way video transmission, video programming, Internet services, or any other like service within any area that is no more than ten miles beyond the outer perimeter of the municipal electric system's service area. - Amends T.C.A. Title 7, Chapter 52, Part 1 and Title 7, Chapter 52, Part 6.
<u>SB 1847 by Southerland HB</u> <u>2076 by McCormick</u>	Enacts the "Broadband Infrastructure for Regional Economic Development Act of 2011." - Amends TCA Title 7.
<u>SB 3372 by Stewart</u> <u>HB 3535 by Matheny</u>	Allows municipal electric systems to provide Internet, video and cable service up to 10 miles beyond their service area. - Amends T.C.A. Title 7, Chapter 52.
<u>SB 3373 by Stewart</u> <u>HB 3536 by Matheny</u>	Allows municipal electric systems to provide Internet, video and cable services up to 10 miles beyond its service area. - Amends T.C.A. Title 7, Chapter 52.
<b>108<sup>th</sup> General Assembly (2013-2014)</b>	
<b>Bill Number</b>	<b>Summary</b>
<u>SB 0839 by Ketron</u> <u>HB 0577 by Todd</u>	As introduced, transfers regulatory authority over municipality operating electric plant that provides cable, video programming, Internet or similar services to Tennessee Regulatory Authority for such services. - Amends T.C.A. Title 7, Chapter 52, Part 6.
<u>SB 940 by Southerland HB</u> <u>986 by Matheny</u>	Authorizes municipal electric systems and other governmental utility authorities that provide broadband services, such as cable and Internet service, to provide such services to economic development, education, and health care projects within a community improvement area under certain circumstances. - Amends TCA Title 7, Chapter 52, Part 6.
<u>SB 2005 by Green</u> <u>HB 1974 by Pitts</u>	Authorizes a municipal electric system of a municipality that has a population of at least 125,000, which includes at least 75 percent of the total population of the county in which the municipality is located, to operate fiber optic facilities and use such facilities to provide video, Internet and other broadband services to the following customers: an industrial park containing at least ten acres in the country where the municipality is located; and commercial or industrial customers in the county where the municipality is located if the customers participate in or receive benefits, or have participated in or received benefits, under one or more programs of the department of economic and community development of any state or a federal sponsored program. Requires the municipal electric system to obtain the written consent of all electric

	cooperative or municipal electric system in whose territory the system will provide such services before the services can be provided. - Amends T.C.A. Title 7, Chapter 52, Part 6.
<u>SB 2562 by Bowling</u> <u>HB 2482 by T. Hill</u>	Authorizes municipal electric systems and other governmental utility authorities that provide broadband services, such as cable and Internet service, to provide such services to economic development, education, and health care projects within a community improvement area under certain circumstances. - Amends TCA Title 7
<u>HB 584 by Matheny</u>	Authorizes a municipal electric system and a governmental utility authority to construct, lease, or otherwise operate fiber optic facilities to provide cable, Internet, and other similar services within its community improvement area subject to approval by a two-thirds majority vote of its governing body. - Amends T.C.A. Title 7, Chapter 52, Part 6.

STATE OF TENNESSEE 20 <sup>TH</sup> JUDICIAL DISTRICT CHANCERY COURT	<b>SUMMONS</b> <b>FILED</b>	CASE FILE NUMBER
<b>PLAINTIFF</b>  Tennessee Cable Telecommunications Association	<b>DEFENDANT</b> 2007 SEP 21 10:02 AM Electric Power Board of Chattanooga CLERK & MASTER DAVIDSON CO. CHANCERY CT	
<b>TO: (NAME AND ADDRESS OF DEFENDANT)</b>  Harold DePriest, President & CEO Electric Power Board of Chattanooga City Hall 101 E. 11 <sup>th</sup> Street Chattanooga, Tennessee 37402		
<b>Method of Service:</b> <input type="checkbox"/> Certified Mail <input type="checkbox"/> Davidson Co. Sheriff <input type="checkbox"/> *Comm. Of Insurance <input type="checkbox"/> *Secretary of State <input type="checkbox"/> *Out of County Sheriff <input checked="" type="checkbox"/> Private Process Server <input type="checkbox"/> Other *Attach Required Fees  List each defendant on a separate summons.		
<b>YOU ARE SUMMONED TO DEFEND A CIVIL ACTION FILED AGAINST YOU IN CHANCERY COURT, DAVIDSON COUNTY, TENNESSEE. YOUR DEFENSE MUST BE MADE WITHIN THIRTY (30) DAYS FROM THE DATE THIS SUMMONS IS SERVED UPON YOU. YOU MUST FILE YOUR DEFENSE WITH THE CLERK OF THE COURT AND SEND A COPY TO THE PLAINTIFF'S ATTORNEY AT THE ADDRESS LISTED BELOW. IF YOU FAIL TO DEFEND THIS ACTION BY THE ABOVE DATE, JUDGMENT BY DEFAULT CAN BE RENDERED AGAINST YOU FOR THE RELIEF SOUGHT IN THE COMPLAINT.</b>		
<b>Attorney for plaintiff or plaintiff if filing Pro Se:</b> (Name, address & telephone number)  John M. Farris Charles B. Welch, Jr. Jamie R. Hollin Farris Mathews Branam Bobango Hellen & Dunlap, PLC 618 Church Street, Suite 300 Nashville, Tennessee 37219 615-726-1200	<b>FILED, ISSUED &amp; ATTESTED</b>  <b>CRISTI SCOTT, Clerk and Master</b> By: <b>1 Public Square</b> <b>Suite 308</b> <b>Nashville, TN 37201</b>  Deputy Clerk & Master	
<b>NOTICE OF DISPOSITION DATE</b>		
<p>The disposition date of this case is twelve months from date of filing. The case must be resolved or set for trial by this date or it will be dismissed by the Court for failure to prosecute pursuant to T.R.C.P. 41.02 and Local Rule 18.</p> <p>If you think the case will require more than one year to resolve or set for trial, you must send a letter to the Clerk and Master at the earliest practicable date asking for an extension of the disposition date and stating your reasons. Extensions will be granted only when exceptional circumstances exist.</p>		
<b>TO THE SHERIFF:</b>	<b>DATE RECEIVED</b>   <b>Sheriff</b>	

\*\*\*Submit one original plus one copy for each defendant to be served.

ADA Coordinator, Cristi Scott (862-5710)

**RETURN ON SERVICE OF SUMMONS**

I hereby return this summons as follows: (Name of Party Served) \_\_\_\_\_

- Served \_\_\_\_\_  Not Found \_\_\_\_\_  
 Not Served \_\_\_\_\_  Other \_\_\_\_\_

DATE OF RETURN:

By:

Sheriff/or other authorized person to serve process

**RETURN ON SERVICE OF SUMMONS BY MAIL**

I hereby certify and return that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I sent, postage prepaid, by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in case \_\_\_\_\_ to the defendant \_\_\_\_\_. On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I received the return receipt, which had been signed by \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The return receipt is attached to this original summons to be filed by the Chancery Court Clerk & Master.

Sworn to and subscribed before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Signature of \_\_\_\_\_ Notary Public or \_\_\_\_\_ Deputy Clerk

Signature of plaintiff, plaintiff's attorney or other person authorized by statute to serve process.

My Commission Expires:

**NOTICE OF PERSONAL PROPERTY EXEMPTION**

TO THE DEFENDANT(S):

Tennessee law provides a four thousand dollar (\$4,000.00) debtor's equity interest personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

Mail list to: Clerk & Master  
1 Public Square  
Suite 308  
Nashville TN 37201

Please state file number on list.

**ATTACH  
RETURN  
RECEIPT  
HERE  
(IF APPLICABLE)**

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

FILED

2007 SEP 21 PM 2:11

CLERK OF MASTER  
DAVIDSON CO. CHANCERY CT.

D.C. & M.

TENNESSEE CABLE )  
TELECOMMUNICATIONS ASSOCIATION, )  
 )  
Plaintiff, )  
v. )  
 )  
ELECTRIC POWER BOARD )  
OF CHATTANOOGA, )  
 )  
Defendant. )

Docket No. \_\_\_\_\_

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COMPLAINT FOR DECLARATORY JUDGMENT

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Comes now the Plaintiff, the Tennessee Cable Telecommunications Association ("TCTA"),  
by and through undersigned counsel, and respectfully states as follows:

**THE PARTIES**

1. The TCTA is a trade organization whose membership consists primarily of owners and operators of franchised cable television systems throughout the state of Tennessee. Presently, multiple members of TCTA are franchisees as defined by Tenn. Code Ann. §§ 7-59-101 et seq. operating in the service area of the Electric Power Board of Chattanooga ("EPB").

2. The EPB was created as a division of the City of Chattanooga by private act in 1935.<sup>1</sup> As a municipally owned utility, the EPB provides electric power to all of the business and residential customers in the City of Chattanooga, most of Hamilton County, and parts of eight other Tennessee counties. The EPB's Telecom Division ("EPB Telecom") is certificated by the Tennessee

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<sup>1</sup> Act of Apr. 15, 1935, ch. 455, 1935 Tenn. Priv. Acts 1125.

Regulatory Authority to provide intrastate telecommunications services within the State of Tennessee.<sup>2</sup>

### JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to Tenn. Code Ann. § 7-52-609 and Tenn. Code Ann. §§ 29-14-101 et seq.

4. Venue in this Court is proper pursuant to Tenn. Code Ann. § 7-52-609 as the acts of the Office of the Comptroller of the Treasury of the State of Tennessee (the “Comptroller”), which maintains ultimate approval authority for cable television/Internet plans submitted within the State of Tennessee, occurred in Davidson County and the EPB’s Telecom Division is certificated by the Tennessee Regulatory to provide intrastate telecommunications services within the State of Tennessee.

### FACTS

5. During its 1999 session, the Tennessee General Assembly adopted enabling legislation, codified at Tenn. Code Ann. §§7-52-601 et seq., permitting municipally owned electric plants to provide cable television/video, Internet and related services within its existing service areas, subject to certain conditions designed to regulate the orderly development of a competitive market.

6. On or about August 17, 2007, the EPB approved a “Fiber Optic Broadband Business Plan” (the “Plan”) for the proposed development of a cable television/Internet network (the “Network”).

7. On or about August 17, 2007, the EPB submitted the Plan to the Comptroller pursuant to Tenn. Code Ann. § 7-52-602. Attached as Exhibit 1 and incorporated herein by reference is a true and accurate copy of the Plan as submitted to the Comptroller.

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<sup>2</sup>See Order, *In Re: Application of Electric Power Board of Chattanooga for Expanded Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Service*, Docket No. 06-00193 before the Tennessee Regulatory Authority (August 23, 2007).

8. On or about August 21, 2007, the Comptroller provided a written analysis of the feasibility of the Plan (the "Feasibility Report") subject to certain assumptions. Those assumptions relied upon were derived exclusively from the Plan itself, as prepared and presented by the EPB. Attached as Exhibit 2 and incorporated herein by reference is a true and accurate copy of the Comptroller's written analysis of the Feasibility Report.

9. On or about September 5, 2007, the EPB conducted a public hearing pursuant to Tenn. Code Ann. § 7-52-602.

10. On or about September 21, 2007, the EPB held a meeting and approved the Plan for the provision of the services contemplated therein.

11. Tenn. Code Ann. § 7-52-603(a)(1)(A) provides, in pertinent part, the following: "[a] municipal electric system [EPB] may not subsidize the operations of the division [cable television/Internet network] with revenues from its power or other utility operations." (Emphasis added).

12. The purpose of the cross-subsidy prohibition found in Tenn. Code Ann. § 7-52-603(a)(1)(A) is to prevent a governmentally owned monopoly from engaging in unfair, anti-competitive marketing and pricing practices to eliminate its competitors and capture market share in an artificial environment.

13. Per the financial projections included in the Plan, the EPB seeks to enter into the video or cable television and high speed Internet market through capital expenditures of \$203 million plus an additional \$10 million in working capital for a total financing requirement of \$213 million.

14. As submitted to the Comptroller, the EPB's Plan states that the Electric System will fund "its portion of the common network with Electric System Revenue bonds."<sup>3</sup>

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<sup>3</sup> See p. 12, ¶ 2 of the EPB Fiber Optic Broadband Business Plan submitted to the State of Tennessee Comptroller of the Treasury dated August 17, 2007.

15. The EPB estimates that the capital expenditures for the Electric System's portion of the jointly used network will be \$169 million, or 83% of the total, anticipated capital expenditures of \$203 million which includes the Network and related equipment.<sup>4</sup>

16. Additionally, the EPB Plan has arbitrarily allocated 100% of the entire cost of the Network to the Electric System, with the exception of the core cable/video plant which represents a small percentage of the total cost of the Network.

17. According to the Plan, the EPB will pledge Electric System revenues to finance the construction and use of the Network, including the repayment of the Network revenue bond.

18. The Plan, as submitted by the EPB, underestimates anticipated operating costs while over-estimating gross revenue by basing such projections on unrealistic expectations of market penetration.

19. The EPB's Network operation is allowed to borrow funds from the Electric System with no realistic expectation that the Network operations will provide sufficient revenues to repay the loans, thus exposing the citizen ratepayers and ultimately, the taxpayers to fund the deficit through an inevitable electric rate or tax increase, all in violation of state law.

20. The Network operations' inability to repay the loans from the Electric System will necessarily mean the Electric System will subsidize the Network operations—a practice strictly prohibited by the language of Tenn. Code Ann. § 7-52-603.

#### DECLARATORY JUDGMENT

21. TCTA incorporates herein by reference those allegations contained in paragraphs 1 through 20.

22. A justiciable case or controversy exists whether the EPB has violated Tenn. Code Ann. § 7-52-603 and whether such violation was committed knowingly or willingly.

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<sup>4</sup> *Id.* at 12.

23. This controversy presents a real question, not a theoretical one, and legally protectable interests of the parties are at stake.

24. TCTA is entitled to a declaratory judgment pursuant to Tenn. Code Ann. §§ 29-14-101 et seq.

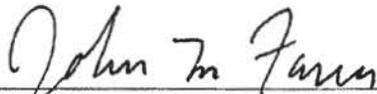
WHEREFORE, PREMISES CONSIDERED, the TCTA prays for the following:

1. The Court to enter a declaratory judgment pursuant to Tenn. Code Ann. §§ 29-14-101 et seq., that the EPB's Plan is in violation of Tenn. Code Ann. 7-52-603;
2. The Court enter an order prohibiting the EPB from implementing the Plan; and
3. The Court award the TCTA any other further, general relief to which it may be entitled.

Respectfully submitted,

FARRIS MATHEWS BRANAN  
BOBANGO HELLEN & DUNLAP, PLC

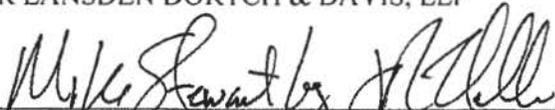
By:



John M. Farris, BPR No. 010435  
Charles B. Welch, Jr., BPR No. 005593  
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cwelch@farrismathews.com  
jhollin@farrismathews.com

WALLER LANSDEN DORTCH & DAVIS, LLP

By:



025460

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