

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

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

Case No. 07-2145-III

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**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT’S MOTION FOR PROTECTIVE ORDER**

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Plaintiff Tennessee Cable Telecommunications Association (“TCTA”) submits this Memorandum of Law in Opposition to Defendant Electric Power Board of Chattanooga’s (“EPB”) Motion for Protective Order (the “Motion”):

**SUMMARY**

EPB is an unregulated, governmentally owned and supported monopoly. EPB apparently plans to spend somewhere between Two Hundred and Fifty to Three Hundred Million Dollars (approximately \$250,000,000 to \$300,000,000)<sup>1</sup> to enter the

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<sup>1</sup> The amount EPB says that it intends to spend on the project at-issue in the lawsuit seems to change over time. The original plan submitted to the Comptroller, a copy of which was filed with the Complaint, refers to a financing requirement of Two Hundred and Thirteen Million Dollars (\$213,000,000). A subsequent February 19, 2008 EPB Requesting Resolution (Resolution No. 2008-07) refers to bond sales of up to Two Hundred Fifty Million Dollars (\$250,000,000). A Resolution adopted on February 26, 2008 (Resolution No. 25440) states that EPB also intends to make a Sixty Million Dollar (\$60,000,000) inter-divisional loan to the cable/Internet division. In calculating the total amount involved in the project, it appears that the inter-divisional loan should be added to the amount of the bonds as the Official Statement associated with the bonds states that “[t]he [inter-divisional] loans will not be made from the proceeds of the Series 2008A bonds.” The seemingly always changing nature of EPB’s approach to financing illustrates why the written discovery that TCTA seeks is so critically important in this case.

cable/Internet market. EPB it seeks to avoid any meaningful judicial scrutiny as to its non-compliance with the Tenn. Code Ann. §§ 7-52-601 et seq. (the “Cable Act”).

Pursuant to the Cable Act, the chancery court where the violation occurred is the appropriate venue for seeking redress. TCTA has brought an action in this Court asserting that the Fiber Optic Broadband Business Plan (the “Plan”) submitted by EPB to the Office of the Comptroller (the “Comptroller”) in Davidson County called for an impermissible cross-subsidy. TCTA served written discovery, tailored to the claim it is pursuing and plainly calculated to lead to the discovery of admissible evidence, on January 29, 2008. Instead of responding to the discovery on or before March 3, 2008 as required by the rules of civil procedure, EPB instead filed this Motion on that same day.

EPB argues that TCTA’s discovery: (1) is prohibited by the Tennessee Uniform Administrative Procedures Act (the “UAPA”); or (2) is limited under Tenn. Code Ann. § 27-8-101 or a common law writ of certiorari to the documents submitted to the Comptroller; or (3) should be stayed pending a ruling on its Motion for Judgment on the Pleadings Based Upon Ripeness, Failure to Exhaust Administrative Remedies, and Standing. None of EPB’s arguments plow new ground. As set forth in prior filings and as discussed at the March 7, 2008 hearing on EPB’s earlier motions, TCTA is following the express mandate of the Cable Act by pursuing a claim in this Court and the UAPA does not apply. TCTA is entitled to discovery like any other litigant. EPB’s arguments are not well taken and should be rejected.

### **PROCEDURAL HISTORY AND FACTS**

For the sake of judicial economy, TCTA incorporates herein by reference the recitation of the procedural history in its Response Memoranda in Opposition to EPB’s

Motion to Dismiss, Motion for Reconsideration and, Alternatively, Permission to Take Interlocutory Appeal, Motion for Judgment on the Pleadings, and TCTA's Motion for Expedited Trial (collectively, the "Briefs"). Subsequent to TCTA filing all its Briefs and this Motion, the Court heard arguments from the parties' counsel on March 7, 2008 relative to EPB's multiple attempts to have the case dismissed. The Court's ruling is pending at the time of the filing of this response.

EPB's course since its original submission of the Plan to the Comptroller has materially changed, but TCTA's legal position remains unchanged. Some time in late February 2008, EPB submitted a revised business plan to the Comptroller (the "Revised Plan"). A copy of the Revised Plan is attached hereto as Exhibit A. The Revised Plan now appears intent on funding the cable/Internet venture in its entirety through electric revenue bonds followed by an inter-divisional loan secured by in lieu of tax payments.<sup>2</sup> Copies of the City Council Resolutions and the Comptroller's letter in response relative to the Revised Plan are attached collectively as Exhibit B.

## ARGUMENT

### **EPB'S Motion Should Be Denied**

EPB's arguments have no merit and should be rejected. The parties should proceed with written and oral discovery consistent with their obligations under the rules of civil procedure.

#### **I. EPB Has Failed to Show Good Cause**

Tenn. R. Civ. P. 26.03 provides a method for entry of protective orders regarding discovery upon a showing of good cause to protect a party [EPB] from annoyance,

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<sup>2</sup> Securing the inter-divisional loan by in lieu of tax payments may give rise to an additional cross-subsidy claim, however, TCTA will wait to raise any new claims after discovery is complete.

embarrassment, oppression, or undue burden or expense. EPB does not seek to limit discovery, but to prohibit discovery altogether.<sup>3</sup> EPB has not objected to the scope of TCTA's discovery requests or to any particular interrogatory or document request contained therein.

EPB is a massive organization. It had Four Hundred Twenty-one Million Dollars (\$421,000,000) in electric revenues last year.<sup>4</sup> It is now pursuing the Three Hundred Million Dollar (\$300,000,000)<sup>5</sup> cable/Internet venture at-issue in this litigation. Given its size alone, EPB must concede that there is no undue burden or expense relative to TCTA's written discovery.<sup>6</sup> Similarly, EPB's executive officers and directors would have a difficult—if not impossible—argument to suggest they would be annoyed, embarrassed, or oppressed from responding to written discovery.

Instead, EPB seeks a protective order that TCTA be prohibited from taking discovery, or if allowed, only discovery confined to the record before the Comptroller (based upon the applicable restrictions of the UAPA), Tenn. Code Ann. § 27-8-101 or, alternatively, stayed pending the Court's ruling on its Motion for Judgment on the Pleadings. These arguments are without merit and provide no grounds under Tenn. R. Civ. P. 26.03 for entry of a protective order.

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<sup>3</sup> See Def. Mot. pp. 4-5.

<sup>4</sup> <http://www01.epb.net/index.php?page=about>

<sup>5</sup> See footnote 1, p. 1.

<sup>6</sup> EPB complains only that "...the time and resources necessary to respond to TCTA's discovery...is apparent and not insubstantial." (Def. Mem. p. 9).

## II. Discovery is Favored by the Courts in Tennessee

“The Tennessee Rules of Civil Procedure embody a broad policy favoring the discovery of any relevant, non-privileged evidence.” See Tenn. R. Civ. P. 26.02(1); Vythoukask v. Vanderbilt Univ., 693 S.W.2d 350, 357 (Tenn. Ct. App. 1985). Although the decision to enter a protective order lies within the sound discretion of the trial court,<sup>7</sup> the moving party [EPB] must demonstrate specific examples of harm and not mere conclusory allegations.<sup>8</sup> EPB conclusorily asserts—albeit parenthetically—that TCTA’s need for information is “nonexistent” while the burden imposed on EPB to respond is “obviously large.” (Def. Mem. p. 8). “A trial court should decline to limit [prohibit] discovery if the party seeking the limitations [prohibition] cannot produce specific facts to support its request.” Duncan v. Duncan, 789 S.W.2d 557, 561 (Tenn. Ct. App. 1990).

### A. The UAPA Does Not Apply to Violations of the Cable Act

EPB is attempting to re-plow old ground with this Motion. It raises again here the contention first raised in its Motion for Judgment on the Pleadings that TCTA’s claims are subject to the UAPA, codified at Tenn. Code Ann. §§ 4-5-101, et seq. Building from this premise, it argues that discovery must be limited to the administrative record that was before the Comptroller.

EPB misunderstands or mischaracterizes TCTA’s claim for declaratory relief. TCTA has always maintained that EPB’s Plan, including the Revised Plan, is an illegal

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<sup>7</sup> See Loveall v. Honda Motor Co. Inc., 694 S.W.2d 937, 939 (Tenn. 1985).

<sup>8</sup> See Loveall at 939.

business plan in violation of the Cable Act.<sup>9</sup> TCTA’s critical averment that “...EPB will pledge Electric System revenue to finance construction and use of the Network, including the repayment Network revenue bond”<sup>10</sup> is not based on any future illegality—this violation of the Cable Act has already taken place. This alleged illegality is a violation of Tenn. Code Ann. 7-52-603(a)(1)(A)—the Revised Plan does not remedy this violation.

The acts of the Comptroller **are not** the primary bases for the Complaint. Rather, EPB’s submission of the illegal Plan to the Comptroller is the basis for the Complaint. The question of where TCTA should go to seek a remedy for violation of the Cable Act is answered by Tenn. Code Ann. § 7-52-609. Rather than requiring TCTA to follow the procedures dictated by the UAPA, the Cable Act provides for a direct action in the chancery court.<sup>11</sup>

Tenn. Code Ann. § 7-52-609 permits a civil action to be brought “for injunctive or declaratory relief for a violation under this part. . . .” That section goes on to place both jurisdiction and venue for such actions in the chancery court, and it stresses that “[s]uch actions shall be scheduled for hearing **as a priority** by the court.” (Emphasis added). Clearly, the Legislature recognized the timely nature of such disputes and it

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<sup>9</sup> See Complaint ¶ 17; TCTA Memorandum in Opposition to EPB’s Motion to Dismiss, pp. 7-8; TCTA Memorandum in Opposition to EPB’s Motion for Judgment on the Pleadings, pp. 5-6; and TCTA’s Memorandum in Opposition to EPB’s Motion for Reconsideration and, Alternatively, Permission to Take Interlocutory Appeal (incorporating TCTA’s previous positions in its Memorandum in Opposition to EPB’s Motion to Dismiss).

<sup>10</sup> See Compl. ¶ 20.

<sup>11</sup> The Comptroller has not engaged in rule-making and there are no procedures to follow. This further demonstrates the propriety of pursuing an action in this Court.

thereby ordered aggrieved parties to proceed directly to judicial review, rather than having to go through the UAPA.

As discussed in TCTA's March 3, 2008 response, contrary to EPB's assertion, the UAPA is not the "sole and exclusive" method for challenging the decisions of administrative agencies. See Frye v. Memphis State Univ., 671 S.W.2d 467, 468-69 (Tenn. 1984); Stephens v. Roane State Comm. College, No. M1998-00125-COA-R3-CV, 2000 Tenn. App. LEXIS 100, \* 6-8 (Tenn. Ct. App. Feb. 18, 2000) (finding that the more specific and detailed statutes at Tenn. Code Ann. §§ 49-8-301 et seq. govern the tenure of college and university faculty members, rather than the more general provisions of the UAPA);<sup>12</sup> Richardson v. Tennessee Assessment Appeals Com., 828 S.W.2d 403, 405 (Tenn. Ct. App. 1991) (finding that a later act controlled over the UAPA in the context of the proper judicial standard of review). It is more accurate to state that the UAPA provides a method for challenging administrative agencies' decisions **unless** a more specific method is provided in a subsequent statute. The Cable Act, at Tenn. Code Ann. § 7-52-609, provides for a more specific method.

While Tenn. Code Ann. § 4-5-103(b) generally provides that the UAPA controls in the event of conflict between the UAPA and other statutes, Tenn. Code Ann. § 7-52-608, specifically states that "[t]his part supersedes **any** conflicting provisions of general law, private act, charter or metropolitan charter provisions." (Emphasis added). In Tennessee, it is a well established rule of statutory construction that specific provisions of statutes control over general provisions. Cooper v. Alcohol Comm'n of the City of Memphis, 745 S.W.2d 278, 280 (Tenn. 1988).

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<sup>12</sup> Copies of these cases have been filed previously with the Court.

Moreover, the Tennessee Supreme Court has determined that the UAPA supersedes and repeals **earlier** procedural statutes applicable to state agencies that conflict with it. Ogden v. Kelley, 594 S.W.2d 702, 704 (Tenn. 1980). See also Richardson, 828 S.W.2d at 405 (“where ‘there is an irreconcilable conflict between the two statutes . . . the provisions of the latter act must prevail’”) (quoting Southern Const. Co. v. Halliburton, 258 S.W. 409 (Tenn. 1924)). The UAPA was adopted in 1974, while the Cable Act was passed in 1999. As such, the UAPA could not have superseded or repealed the provisions for direct judicial review set forth in Tenn. Code Ann. § 7-52-609.

The clear language of the Cable Act provides that a plaintiff need not go through the UAPA procedures. Rather, it provides for a direct action to the chancery court. The specific language of Tenn. Code Ann. § 7-52-608 trumps the more general provisions of Tenn. Code Ann. § 4-5-103(b).

There is simply nothing in the Cable Act to suggest that discovery is in any way restricted or should be any different than that allowed any other litigant in Chancery Court. If discovery is not permitted, the Court’s oversight role with respect to violations of the Cable Act—a role the legislature plainly intended the Court to have—is meaningless. Because TCTA’s claim is not subject to the UAPA, EPB’s effort to limit discovery should be rejected.

**B. Tenn. Code Ann. § 27-8-101 Is Not Applicable to TCTA’s Complaint**

As set forth above, it is the filing of the illegal Plan, not the action of the Comptroller that is truly at-issue in this case. TCTA’s complaint is premised on Tenn. Code Ann. § 7-52-609 and Tenn. Code Ann. §§ 29-14-101 et seq., not Tenn. Code Ann. §

27-8-101. Section 609 sets forth the route that plaintiffs like TCTA are to follow. EPB's discussion of common law writs of certiorari and Tenn. Code Ann. § 27-8-101 are of no moment or consequence.

**C. Discovery Should Not be Stayed Pending the Court's Ruling on Motion for Judgment on the Pleadings**

Discovery in this case should proceed. The Court recognizes that TCTA has a valid claim for a declaratory judgment pursuant to Tenn. Code Ann. §§ 7-52-609 and 29-14-101 *et seq.* Admittedly, the decision to grant a motion for a protective order lies within the sound discretion of the trial court.<sup>13</sup> The unreported cases relied upon by EPB to support its position for a stay of discovery, however, have no relevance here.<sup>14</sup> The nature of this dispute is plainly distinguishable.

In order to vindicate the Cable Act and to protect the competitive marketplace, cross-subsidy violations—the bases of TCTA's complaint—must be brought to the Court's attention and decided **promptly**. In fact, Tenn. Code Ann. § 7-52-609 provides that “[s]uch actions **shall** be scheduled for a hearing as a priority of the court.” (Emphasis added). A stay of discovery is directly contrary to the Cable Act's instruction. In order to prevent the litigation from dragging on indefinitely and to prevent TCTA and its members from suffering irreparable harm, the Court should deny EPB's request to stay discovery.

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<sup>13</sup> Loveall at 939.

<sup>14</sup> Simmons v. State Farm Gen. Ins. Co., 2004 WL 2715341 (Tenn. Ct. App. 2004); Burton v. Hardwood Pallets, Inc., 2001 WL 158162 (Tenn. Ct. App. 2001); Cobb v. Wilson, 1999 WL 1097847 (Tenn. Ct. App. 1999); and Sweatt v. Conley, 1997 WL 749482 (Tenn. Ct. App. 1997) were all cases affirming a trial court's entry of a protective order reviewed on an abuse of discretion standard. The cases cited by EPB stand only for the generic (and uncontroversial) conclusion that a court has discretion to enter a protective order staying or limiting discovery. None of the cases cited by EPB relate to claims brought under the Cable Act and none arose in factual circumstances similar to those presented here.

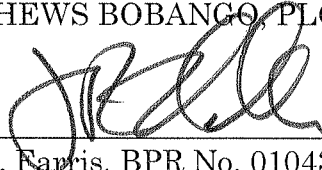
CONCLUSION

In light of the foregoing reasons, TCTA respectfully requests that the Court deny EPB's Motion for Protective Order.

Respectfully submitted,

FARRIS MATHEWS BOBANGO, PLC

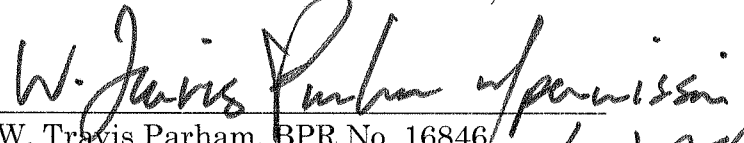
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been delivered to the following:

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*Attorneys for Electric Power  
Board of Chattanooga*

This the 24<sup>th</sup> day of March, 2008.



A handwritten signature in black ink, appearing to read "Joe A. Conner", is written over a horizontal line.

# EPB - FTTH Business Plan

## Details of Financing Change

### Comptroller report

- Combination of 25 year bonds and interdivisional loans totaling \$46M.
- Guaranteed by a combination of the revenues of FTTH system, interdivisional note availability, and bond insurance.

### Current Structure

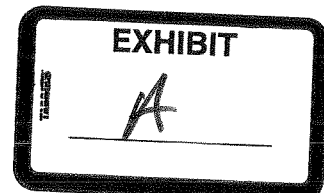
- Fully funded by 20 year interdivisional facility with multiple notes up to \$80M.
- Guaranteed by a portion of the incremental in-lieu of taxes to the city and county.

### Issues that brought about the change

- U.S. sub-prime credit crisis caused a change in the markets that resulted in the need for a full backing of the electric system.
- Bond insurance possibilities dried up with the credit crisis.

### Determination

- If a full electric system backing is necessary, an interdivisional loan results in an overall lower cost of financing with the same effect.
- Increased debt availability from \$46M to \$60M is not due to a change in the business plan, but to keep us from having to seek additional funding in the event of a higher take rate.



## Effect of Financing Change on FTTH Business Plan

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6-10
<b>Other Income / (Expense)</b>						
- Comptroller Report	(3,517,559)	(8,206,354)	(15,656,327)	(17,880,536)	(18,899,693)	(91,818,826)
- Current Structure	(3,546,059)	(8,093,943)	(15,632,865)	(18,434,834)	(19,340,575)	(92,653,098)
Variance	(28,500)	(112,411)	(23,462)	554,298	440,882	834,272
<b>Net Income</b>						
- Comptroller Report	(6,442,687)	(9,706,695)	(7,022,714)	52,751	(501,204)	5,587,371
- Current Structure	(6,427,195)	(9,191,201)	(6,585,209)	143,922	(296,164)	7,987,115
Variance	15,492	515,494	437,505	91,171	205,040	2,399,744
<b>Debt</b>						
- Comptroller Report	46,000,000	46,000,000	45,250,000	44,500,000	42,477,273	32,363,636
- Current Structure	21,310,609	31,917,664	40,915,208	38,302,947	36,913,122	26,801,152
Variance	(24,689,391)	(14,082,336)	(4,334,792)	(6,197,053)	(5,564,151)	(5,562,484)

Notes: All P&L variances are due primarily to differences in interest income/(expense) as the original financing plan included all bond proceeds on the balance sheet at inception, and current plan uses multiple notes as cash is required.

Overall debt tracks lower with the new structure, as smaller notes are layered on as needed, allowing cash flow to be used to pay principle faster. Additionally, the new structure is a 20 year term versus a 25 year term.



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

February 15, 2008

Mr. L. Joe Ferguson, Chairman  
EPB  
Post Office Box 182255  
Chattanooga, Tennessee 37422-7255

Dear Mr. Ferguson:

This agreement is entered into pursuant to the Power Contract between Municipality and TVA (numbered TV-76050A and dated January 17, 1989) as amended (Power Contract), including, without limitation, Section 6 of the Power Contract and Section 1 of the Terms and Conditions attached thereto. Pursuant to the Power Contract, this agreement confirms the understanding between the City of Chattanooga, Tennessee, (Municipality) acting by and through the Electric Power Board of Chattanooga (EPB), and the Tennessee Valley Authority (TVA), with respect to the construction of a fiber optic network and the anticipated joint use by the EPB Electric Division and the Communications Services Division of EPB (the "Communications Services Division") of the fiber optic network.

It is understood and agreed that:

1. Fiber Optic Network. EPB intends to deploy a fiber optic network in the EPB service area, which will be funded by an electric system capital investment consisting of approximately \$169 million in Electric Division bonds to be backed by revenues of the Electric Division. As set forth in section 10 of EPB's "Business Plan For Providing Fiber To The Home," as supplemented by a further EPB study provided by EPB to TVA in October of 2007, EPB is making such an investment in the fiber optic network for the express electric system purpose of implementing an Advanced Distribution Automation (ADA) infrastructure within the EPB service area. The implementation of such ADA infrastructure will provide a direct and substantial benefit to the Electric Division, and accordingly such investment is consistent with the requirements of the wholesale power contract.
2. Joint Use. EPB's business plan for the Communications Services Division anticipates that the fiber optic network will also be used to provide video, Internet, telephone, and similar services to EPB's customers. The Communications Services Division's anticipated joint

use of the fiber optic network with the Electric Division is expected to reduce the Electric Division's total costs for such ADA infrastructure. (It is recognized that the EPB Communications Service Division will have two financially discrete divisions – the Cable and Internet Division and the Telecommunications Division.)

3. Joint Use Contract Standard. Such joint use is authorized by and subject to the terms of section 1(a) of the Schedule of Terms and Conditions of the wholesale power supply contract entered into by TVA and the City of Chattanooga, Tennessee, acting by and through the Electric Power Board of Chattanooga, on January 17, 1989, which provides in part:

In the interest of efficiency and economy, Municipality may use property and personnel jointly for the electric system and other operations, subject to agreement between Municipality and TVA as to appropriate allocations, based on direction of effort, relative use, or similar standards, of any and all joint investments, salaries and other expenses, funds, or use of property or facilities.
4. Allocation of Fiber Optic Network Costs. In connection with the joint use of the fiber optic network, EPB will allocate annual operating costs on a usage based method that allocates costs among its various Divisions according to the number of customers of each Division that receive services over the fiber optic network. A more detailed description of the allocation methodology is attached as Exhibit A. In addition to the costs that will be allocated to the Communications Services Division, EPB expects that, upon maturity of the business plan for the Communications Services Division, the Communications Services Division will make additional payments to the Electric Division in the form of supplemental customer charges. While not required from a cost allocation standpoint, EPB expects that these customer charges will further reduce the Electric Division's cost of ownership of the fiber optic network, thereby further benefiting customers of the Electric Division.
5. Additional Cost Allocations. Other assets, services and personnel will be jointly used by the Electric Division and the Communications Services Division. Costs assigned to and allocated between the Electric Division and the Communications Services Division shall be at fully allocated costs. In the case of an annual charge for facilities, the fully allocated costs should include at a minimum property taxes, depreciation expenses, maintenance expenses and a rate of return on the investment in the asset. In the case of personnel, the fully allocated costs should include all employee benefits, payroll taxes, insurance, pension, and post-retirement benefits other than pension. Cost assignment and allocation

should be based upon the following principles and such assignments and allocations shall be made, as possible, in the following order:

- (a) Directly Assignable Costs - costs of assets and resources incurred exclusively for providing either electric utility services or Communications Services Division activities.
- (b) Directly Attributable Costs - costs of assets and resources incurred to provide both electric utility services and activities of the Communications Services Division that can be apportioned using direct measures of cost causation.
- (c) Indirectly Attributable Costs - costs of assets and resources incurred to provide both electric utility services and Communications Services Division activities which require an indirect measure of cost causation in order to relate the costs to the final objective.
- (d) Unattributable Costs - costs of assets and resources shared between electric utility services and Communications Services Division's activities for which no causal relationship exists. These types of costs are accumulated and allocated to both the electric utility services and telecommunications activities through the use of a General Allocator computed by using the ratio of expenses directly assigned or attributed to electric utility services and Communications Services Division activities. To calculate the unattributable costs to be allocated to the telecommunications division, the unattributable costs would be multiplied by a fraction with the expenses directly assigned and attributed to Communications Services Division services as the numerator and the sum of the expenses directly assigned and attributed to Communications Services Division activities plus the expenses directly assigned and attributed to electric utility services as the denominator. The cost of goods (specifically wholesale power and wholesale broadband services) shall be excluded from the calculation of the directly assigned and attributed expenses.

EPB shall develop, and by no later than June 1, 2008, submit to TVA a Cost Allocation Manual providing for detailed cost allocations of common costs in accordance with the principles set forth above in section 4 and this section 5. EPB shall follow the cost allocations set forth in said Cost Allocation Manual unless changes to the manual are subsequently submitted to TVA, provided that any change to the principles set forth above in section 4 and this section 5 shall require the prior written approval of TVA.

6. Interval Metering Data. Upon TVA's request, EPB shall share with TVA interval metering data in support of future time-of-use pricing and demand response programs.

Mr. Ferguson  
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7. Quarterly Financial Reports. EPB shall submit to TVA quarterly financial reports of the Communications Services Division by no later than 30 days after the end of each quarter.
8. Records. EPB shall maintain books of account and supporting documentation in sufficient detail to permit verification of compliance with the cost assignment and allocation principles approved in this agreement and in the Cost Allocation Manual. EPB shall make available the books, accounts, memoranda, contracts and records of the electric system and the Communications Services Division and any other affiliated company upon the request of TVA.
9. Annual Internal Audit. EPB maintains an internal audit staff, which will be tasked annually with testing the compliance of the Communications Services Division and the Electric Division with the cost allocation principles set forth herein and in the Cost Allocation Manual. Annually, the internal auditors for EPB shall issue a statement detailing EPB's compliance with such cost allocation principles and the Cost Allocation Manual. EPB shall provide the annual statement to TVA. Any work papers associated with such compliance tests shall be made available to TVA.

If this letter correctly states the understanding between us, two fully executed duplicate originals should be returned to TVA. The additional duplicate original is for your files.

Sincerely,



Kenneth R. Breeden  
Executive Vice President

Accepted and agreed to as of  
the date first above written.

CITY OF CHATTANOOGA, TENNESSEE

By Electric Power Board of Chattanooga

By: \_\_\_\_\_  
Chairman

**EPB**  
**COST ALLOCATION OVERVIEW**  
**FIBER OPTIC NETWORK ACCESS CHARGE**

(February 15, 2008)

**Background.** EPB intends to offer competitive broadband services through separate Divisions of EPB. The EPB Communications Services Division will have two financially discrete Divisions. All telecommunications services will be accounted for in the Telecommunications Division, including the current operations of EPB Telecom. Cable and Internet services will be offered through a separate Cable and Internet Division, and EPB's current Internet Division will be rolled into this Division.

The fiber optic network will be an asset of the Electric System with each Division of the Communications Services Division paying a network access charge for its use of the network. EPB has developed a cost allocation methodology for the fiber optic network based upon a regulatory model that has been accepted by the Tennessee Valley Authority (TVA), the Federal Communications Commission (FCC) and the Tennessee Regulatory Authority. Other Tennessee municipal broadband providers currently utilize some variation of this model, and TVA has previously approved the model as an appropriate cost allocation methodology pursuant to Section 1 of the standard TVA Wholesale Power Contract and Section 1(a) of the Schedule of Terms and Conditions attached to the TVA Wholesale Power Contract.

The cost allocation model utilizes the number of services that are provided customers utilizing the network as the basis for allocating costs among various Divisions of EPB. Each service provided to customers -- electric, telecommunications, cable and Internet -- would be counted as one customer use or "service." This model follows the cost allocation model approved by the Federal Communications Commission in *In the Matter of Tennessee Cable Telecommunications Association, et al v. BellSouth Telecommunications, Inc.*, FCC 00-310, 15 F.C.C.R. 16237 (August 18, 2000) (the "TCTA FCC Order"), affirming the underlying FCC Enforcement Bureau Order at 15 F.C.C.R. 7513 (April 19, 2000) (the "TCTA Bureau Order").

In the *TCTA FCC Order*, the FCC upheld the *TCTA Bureau Order*, which had denied a challenge brought by the Tennessee Cable Telecommunications Association and others to a cost allocation methodology proposed by BellSouth in anticipation of its entry into the cable television market. The FCC summarized the BellSouth Cost Allocation Methodology as follows:

BellSouth's methodology for allocating its joint and common costs incurred for the provision of regulated telephone service and nonregulated cable service does so based on the relative number of subscriber circuits for each service. That is, BellSouth determines the relative usage of its facilities by telephony and cable services by comparing the projected number of telephone lines used by its subscribers with the projected number of cable service subscribers. To use the example related by the Bureau, if certain facilities are projected to serve 1,000 telephone lines and 250 cable subscribers, BellSouth will allocate 80% (1000 divided by 1,250) of the joint and common costs of those facilities to telephony, and 20% (250 divided by 1,250) to cable.

*TCTA FCC Order*, 15 F.C.C.R. at 16239.

A more detailed description of EPB's Fiber Optic Network Access Charge follows:

**Fiber Optic Network Access Charge.** The broadband infrastructure and the fiber optic network will benefit the Electric System customers and improve electric system operations.

The fiber optic network will be an asset of the Electric System. While this asset will be jointly used, it is not easily physically divisible and assignable between the Electric System and the various broadband business units of EPB. EPB will charge an access charge that is designed to recover a portion of the network costs from other business units' use of the network. This access charge does not reflect retail revenues, but is rather a cost recovery mechanism to apportion costs to the other uses of the common network. As indicated in the "Background" section, above, the allocation methodology is based on a regulatory model used in the telecommunications industry and accepted by the FCC, the Tennessee Regulatory Authority and TVA. It is based on spreading the cost of owning and operating the network across all of the services that are using the joint use network on a per service basis.

The per service allocation will be based on the highest non-regulated use (i.e., video, Internet and telephone) during a forward looking three year period. In EPB's current business plan, this occurs in Year Three. Table 1 shows the allocation percentages based on number of services for each operation. The number of electric services equals the number of customers located within the area covered by the network. In order to maximize the utilization of the fiber optic network for the Electric System, EPB plans to use a mix of fiber-based and wireless meters to integrate all Electric customers located on or in close proximity to the network.

**Table 1 -- Allocation Factor**

Homes Served	Year 1	Year 2	Year 3
Video	3,130	18,071	42,361
Internet	2,222	12,828	30,070
Telephone	1,541	8,895	20,851
Electric	25,949	30,274	125,422
	32,842	70,069	218,705
Percent Homes Served			
Video	9.53%	25.79%	19.37%
Internet	6.77%	18.31%	13.75%
Telephone	4.69%	12.70%	9.53%
Electric	79.01%	43.21%	57.35%
	100.00%	100.00%	100.00%

The allocation factor is applied to an annual recovery amount designed to recover the fully allocated costs of the fiber optic network. The amount includes a rate of return on net assets, depreciation, and Operating and Maintenance expenses which includes In-Lieu-of-Taxes and pole attachment costs.

Table 2 is an example of this calculation and the allocated amounts for Year Three in EPB's current business plan.

**Table 2 – Recovery Amount**

**Electric System Access Charge**

Electric Plant in Service	145,243,214
Electric Plant in Service - Net	\$ 128,146,084
Rate of Return	4.75%
Return on Plant	<u>6,086,939</u>
Depreciation	10,186,841
O & M	5,896,875
Annual Amount Recovery	<u>\$ 22,170,654</u>

**Allocation**

Video	\$ 4,294,273
Internet	\$ 3,048,266
Telephone	\$ 2,113,761
Electric	\$ 12,714,354
	\$ 22,170,654

The annual cost allocation to the video and Internet operations represents the amount to be recovered from the Cable and Internet Division in that year. The annual cost allocation to the telephone operations represents the amount to be recovered from the Telecommunications Division in that year.



Tennessee Valley Authority, 1101 Market Street, Chattanooga, Tennessee 37402-2801

February 15, 2008

Mr. L. Joe Ferguson, Chairman  
EPB  
Post Office Box 182255  
Chattanooga, Tennessee 37422-7255

Dear Mr. Ferguson:

This supplement is entered into pursuant to the Power Contract between Municipality and TVA (numbered TV-76050A and dated January 17, 1989) as amended (Power Contract) and confirms the understandings between the City of Chattanooga, Tennessee (Municipality), acting by and through the Electric Power Board of Chattanooga (EPB), and the Tennessee Valley Authority (TVA). Pursuant to the Power Contract, this supplement specifies the terms and conditions of interdivision loans of the electric system funds by the EPB Electric Division to the cable and internet business unit ("Cable and Internet Division") of EPB's Communications Services Division.

EPB and Municipality have represented to TVA that:

- A. The Electric Division retains a portion of the revenues collected under the resale rates and charges provided for by the Power Contract as "reasonable reserves for renewals, replacements, and contingencies" in accordance with the provisions of section 6(a)(3) of the Power Contract.
- B. The Electric Division wishes to invest a portion of such retained funds (Reserve Funds) by making interdivision loans to the Cable and Internet Division, and the Electric Division expects to financially benefit from such loans.
- C. More specifically, these funds will be used to make loans from the Electric Division to the Cable and Internet Division not to exceed an aggregate interdivision loan amount of Sixty Million Dollars (\$60,000,000) to be used for capital expenditures and for working capital for the Cable and Internet Division.
- D. The General Assembly of the State of Tennessee enacted Tennessee Code Annotated, Title 7, Chapter 52, Part 6, which authorizes municipal electric plants to own and operate cable and Internet plant and to provide cable

and Internet services. Under this Part, the Electric Division is authorized to lend funds to the Cable and Internet Division.

- E. Any such interdivision loan will only be made subject to and in accordance with the terms and conditions set forth in the numbered paragraphs 1 through 6 below.

Based on the above assurances by EPB and Municipality, this TVA letter, when accepted and agreed to by EPB and Municipality as provided below, shall confirm TVA's agreement that said loans will be consistent with the obligations of EPB and Municipality under the Power Contract.

TVA and Municipality hereby agree that:

1. EPB may make a loan or loans from the Electric Division of funds not to exceed an aggregate amount of up to Sixty Million Dollars (\$60,000,000) to the Cable and Internet Division provided, however, that the Electric Division shall have no obligation or responsibility to make or keep any funds available for this purpose. The date on which the Electric Division makes any such loan shall be the "Initial Date" of the loan.
2. Principal and interest shall be paid in annual installments due on August 15 of each year (Annual Payment Date) as further provided for below in this section and in sections 3 through 5 below. EPB shall cause its Cable and Internet Division to pay to its Electric Division interest accruing on any such loan at the rate applicable under section 3 below. Interest on any such loan shall be paid annually in arrears to the Electric Division and shall be calculated on the basis of a 360 day year of twelve 30 day months, with any interest for a period of less than one year being calculated on a prorated basis. Such interest payments will include any interest accrued from and including the later of (a) the Initial Date of the loan or (b) the preceding interest payment date. Beginning 18 months after the Initial Date of each loan, EPB shall further cause its Cable and Internet Division to amortize the principal amount of the loan over the remaining term of each loan. The amount of such principal amortization will be included in all annual repayments beginning on the first Annual Payment Date falling at least 548 days after the Initial Date of each loan until such time as any such loan is fully repaid; provided, however, that the Cable and Internet Division shall complete repaying the Electric Division the principal amounts, together with all accrued and unpaid interest, in a term ending no later than August 15, 2028.
3. The interest rate on any such loan shall be set on the Initial Date of the loan, and adjusted on August 15 of each year, to be the higher of:

- (a) the highest interest rate then being earned on invested Electric Division funds, plus an amount equal to the spread over U.S. Treasury bonds for the composite of taxable double-A rated municipal debt issues on Bloomberg, or other nationally recognized pricing service, plus 0.25 percent, or
  - (b) the then-applicable interest rate for a composite of taxable double-A rated municipal debt issues on Bloomberg, or other nationally recognized pricing service, plus 0.25 percent.
4. Any such loan shall be callable by the Electric Division upon no more than 15 days' written notice if such funds are needed for use by the by the Electric Division.
5. Any such loan shall be secured by (i) a right of the Electric Division, as described in the next sentence, to withhold all payment in lieu of tax amounts excluding such portions as would be available to the school system of Hamilton County (Tax Equivalent Payments) on the Covered Assets (defined below) which the Electric Division would otherwise make in accordance with section 1 of the Power Contract and section 2 of the Terms and Conditions to the Power Contract, and (ii) a right of the Electric Division to first payment of Cable and Internet Division revenue, as described in the last sentence of this section 5. Should the Cable and Internet Division fail to pay any principal or interest when due under paragraphs 2 and 4 above, the Electric Division shall immediately discontinue its Tax Equivalent Payments on the Covered Assets and utilize such withheld funds as Reserve Funds of the Electric Division until such time as the Electric Division has recovered any amounts of principal and interest not paid in accordance with the provisions of paragraphs 2 through and 4 above (Past Due Amount), plus interest on any such Past Due Amount to be applied on a daily basis at the current Fed Funds interest rate. For purposes of this paragraph, "Covered Assets" shall mean all new investment by the Electric Division in a fiber optic network (including associated equipment) occurring on or after January 1, 2008. Further, if any such Past Due Amount is not recovered within 90 days of the date on which such amount is due, the Electric Division shall also exercise its right of first payment of Cable and Internet Division revenue to recover such Past Due Amount plus interest as described above in this section.
6. Unless TVA agrees otherwise, the Electric Division will furnish no other credit, guarantee, or other financial accommodations to or on behalf of the Cable and Internet Division. It is expressly recognized that this supplement shall not amend or otherwise affect any existing interdivision loans between the Electric Division and other divisions of EPB that have previously been approved by TVA.

Mr. Ferguson  
Page 4  
February 15, 2008

If this letter correctly states the understanding between us, two fully executed duplicate originals should be returned to TVA. The two additional duplicate originals are for your files.

Sincerely,



Kenneth R. Breeden  
Executive Vice President

Accepted and agreed to as of the date first above written.

CITY OF CHATTANOOGA, TENNESSEE

By: \_\_\_\_\_  
Mayor

CITY OF CHATTANOOGA, TENNESSEE

By Electric Power Board of Chattanooga

By: \_\_\_\_\_  
Chairman

Resolution No. 2008-07  
(February 19, 2008)

A RESOLUTION OF THE  
ELECTRIC POWER BOARD OF CHATTANOOGA  
REQUESTING THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,  
TENNESSEE, TO EXECUTE A FOURTH SERIES RESOLUTION  
TO BE DESIGNATED AS SERIES 2008A BONDS

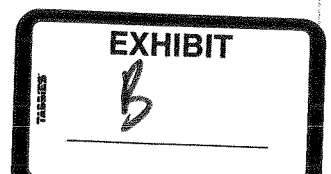
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WHEREAS, the Electric Power Board of Chattanooga (“EPB”) has responsibility for the exclusive management and control of the operations of the electric transmission and distribution system providing electric service to the citizens and residents of the City of Chattanooga and surrounding areas (the “Electric System”); and

WHEREAS, under the Charter of the City of Chattanooga and the laws of the State of Tennessee, debt to finance capital improvements for the operation of the Electric System is authorized for issuance by the City Council of the City of Chattanooga, Tennessee, for the use and benefit of EPB; and

WHEREAS, at the request of EPB, the City Council of the City of Chattanooga has heretofore on September 5, 2000, adopted a Master Bond Resolution being City Council Resolution No. 22629 authorizing the issuance of electric revenue bonds by the City of Chattanooga from time to time for the use and benefit of EPB; and

WHEREAS, management has recommended that EPB request that the City of Chattanooga issue Electric System revenue bonds on behalf of EPB in a sum not to exceed [Two Hundred Fifty Million Dollars (\$230,000,000)] (the “Series 2008A Bonds”) to finance the construction of a fiber optic broadband network (the “Fiber Infrastructure”) and various capital improvements to the Electric System (together, “the Capital Projects”), capitalized interest and costs of issuance; and



WHEREAS, management of EPB has continued to study and analyze the quantitative and qualitative benefits associated with the Electric System's construction and use of the Fiber Infrastructure, and management of EPB recommends the Fiber Infrastructure as the most appropriate advanced communications system for the current and future needs of the Electric System; and

WHEREAS, management of EPB has furnished its additional analysis to the Tennessee Valley Authority ("TVA") concerning the anticipated benefits to the Electric System associated with the construction of the Fiber Infrastructure; and

WHEREAS, the analysis furnished to TVA identifies and projects substantial anticipated quantitative and qualitative benefits over a ten (10) year period to the Electric System and its ratepayers from the Electric System's operation of the Fiber Infrastructure; and

WHEREAS, management has projected that the benefits to the Electric System and its ratepayers from the Fiber Infrastructure include but are not limited to anticipated reduction of theft, anticipated efficiencies and cost savings associated with advanced metering infrastructure, anticipated benefits associated with future TVA-approved demand response programs, and additional anticipated societal benefits associated with increased Electric System reliability; and

WHEREAS, by proposed agreement dated February \_\_, 2008, a copy of which is attached hereto, TVA has indicated that it acknowledges and agrees that the construction of the Fiber Infrastructure will provide a direct and substantial benefit to the Electric System and that the Electric System investment in the Fiber Infrastructure is consistent with the requirements of the wholesale power contract between TVA and EPB; and

WHEREAS, the Fiber Infrastructure is also usable in the provision of cable and Internet services, but the ability of any future cable and Internet operations of EPB to use capacity on the

Fiber Infrastructure has been challenged in the case styled *Tennessee Cable Telecommunications Association v. Electric Power Board of Chattanooga*, Docket No. 07-2145-III, in the Chancery Court of Davidson County, Tennessee (the "TCTA Litigation"); and

WHEREAS, EPB management has determined that the anticipated benefits to the Electric System warrant the construction and operation of the Fiber Infrastructure as an improvement to the Electric System on a stand alone basis; and

WHEREAS, after the consideration of the recommendations and conclusions of EPB management and having determined that the Capital Projects are "public works" projects of the Electric System as defined under Tennessee Code Annotated, Title 7, Chapter 34, the members of the Board of EPB, as the governing body with responsibility for the Electric System, desire to request that the City Council of the City of Chattanooga authorize the issuance of bonds to finance the Capital Projects for the Electric System, notwithstanding the pending TCTA Litigation and without regard to the subsequent ability or inability of any Division of EPB other than the Electric System to utilize the Fiber Infrastructure.

NOW, THEREFORE, BE IT RESOLVED BY THE ELECTRIC POWER BOARD OF CHATTANOOGA that the City Council of the City of Chattanooga, Tennessee be, and hereby is, requested to adopt and enact in substantially the form as presented at this meeting and incorporated by reference, the resolution captioned as follows:

FOURTH SUPPLEMENTAL RESOLUTION TO RESOLUTION NO. 22629, AS AMENDED AND SUPPLEMENTED BEING A MASTER BOND RESOLUTION PROVIDING FOR THE ISSUANCE OF BONDS BY THE CITY OF CHATTANOOGA FOR THE USE AND BENEFIT OF THE ELECTRIC POWER BOARD, IN ADDITION TO THOSE BONDS HERETOFORE ISSUED BY THE CITY OF CHATTANOOGA, TENNESSEE, AUTHORIZING UP TO [\$230,000,000] SERIES 2008A BONDS AS ELECTRIC SYSTEM BONDS.

BE IT FURTHER RESOLVED that the foregoing requested resolution is supplemental to, and constitutes a Supplemental Resolution within the meaning of, and is adopted in

accordance with, Article XII of the Master Resolution adopted by the City Council of the City of Chattanooga on September 5, 2000.

BE IT FURTHER RESOLVED that senior management of EPB is authorized, in consultation with representatives of the City of Chattanooga and the advice of Public Financial Management (PFM), financial advisors to the City of Chattanooga and to EPB, and Katten Muchin Rosenman LLP, bond counsel for both the City of Chattanooga and EPB, and with the EPB General Counsel and Miller & Martin PLLC, (a) to prepare such further instruments and modifications in the Supplemental Resolution as shall be required prior to consideration for final adoption by the City Council, (b) to prepare such provisions to be included in the Official Statement as shall be required in form and substance, in connection with the offering and sale of the Series 2008A Bonds; and (c) to report to the members of the Board of EPB the nature and scope of any significant changes or modifications made by City Council in form or substance to the Series 2008A Bond Resolution as presented at this meeting or, upon its adoption and enactment in final form, by the City Council.

ADOPTED this \_\_\_\_ day of February, 2008.

\_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Secretary

RESOLUTION NO. 25440

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT ON BEHALF OF THE CITY WITH THE TENNESSEE VALLEY AUTHORITY (TVA) AND THE ELECTRIC POWER BOARD (EPB), A DIVISION OF THE CITY, REGARDING AN EPB INTERDIVISION LOAN IN AN AMOUNT NOT TO EXCEED SIXTY MILLION DOLLARS (\$60,000,000.00) OF ELECTRIC SYSTEM FUNDS TO BE USED FOR CAPITAL EXPENDITURES AND FOR WORKING CAPITAL FOR THE CABLE AND INTERNET DIVISION, WHICH LOAN IN THE EVENT THAT THE CABLE AND INTERNET BUSINESS DIVISION HAS INSUFFICIENT FUNDS TO PAY PRINCIPAL AND INTEREST DUE IN A PARTICULAR YEAR ON THE ELECTRIC DIVISION LOAN WILL BE SECURED, BY A REDUCTION IN THE EPB IN LIEU OF TAX PAYMENTS TO THE CITY ON ALL NEW INVESTMENTS AFTER JANUARY 1, 2008, SUBJECT TO HAMILTON COUNTY AGREEING TO FOREGO ITS INCREMENTAL TAXES ON THE "COVERED ASSETS" AS DEFINED IN SAID AGREEMENT EXCEPT FOR THOSE TAXES THAT WOULD BE PAYABLE TO THE SCHOOL SYSTEM OF HAMILTON COUNTY.

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WHEREAS, the Electric Power Board of Chattanooga ("EPB") made tax equivalent payments to the City of Chattanooga in 2007 in excess of \$3,300,000.00;

WHEREAS, EPB's tax equivalent payments make it the largest single payer of taxes to the City of Chattanooga;

WHEREAS, EPB's tax equivalent payments are made pursuant to the terms of EPB's Power Contract with the Tennessee Valley Authority ("TVA") and T.C.A. Title 7, Chapter 52;

WHEREAS, under the Power Contract, TVA regulates other aspects of EPB's operations, including its use of electric system revenue;

WHEREAS, EPB has announced that its electric system will invest approximately \$169,000,000.00 in a new fiber communications system as part of an advanced distribution automation system to improve service to its electricity customers and reduce its electric system costs;

WHEREAS, when complete, the new electric system's fiber communications investment will result in an EPB tax-equivalent payment increase of approximately \$1,400,000.00 per year to the City of Chattanooga, based on current tax rates;

WHEREAS, EPB has also announced the creation of a Cable TV and Internet Business Unit that will use parts of the electric system fiber communications system under appropriate financial arrangements that will ensure that electric system customers do not subsidize the Cable TV and Internet Business Unit. TVA has reviewed and approved those financial arrangements;

WHEREAS, TVA has also approved an interest bearing loan from retained funds of EPB's Electric Division to the Cable TV and Internet Business Unit (the "Electric Division Loan");

WHEREAS, TVA has supplemented its Power Contract terms concerning tax equivalent payments to specify that tax equivalent payments associated with the new investment in the electric system's advanced distribution system and with new investment by the Cable TV and Internet Business Unit would be reduced in the event that the Cable TV and Internet Business Unit has insufficient funds to pay principal and interest due in a particular year on the Electric Division Loan. The TVA supplement provides that it will not cause a reduction in EPB tax equivalent payments attributable to Hamilton County's levy for educational purposes;

WHEREAS, the City of Chattanooga has been advised of the supplement to the Power Contract concerning tax equivalent payments and its potential operation.

NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, the Mayor be and is hereby authorized to enter into an Agreement on behalf of the City with TVA and EPB, a division of the City, regarding an EPB interdivision loan in an amount not to exceed \$60,000,000.00 of Electric System Funds to be used for capital

expenditures and for working capital for the Cable and Internet Business Unit, which loan in the event that the Cable and Internet Business Unit has insufficient funds to pay principal and interest due in a particular year on the Electric Division Loan will be secured, by a reduction in the EPB in lieu of tax payments to the City on all new investments after January 1, 2008, subject to Hamilton County agreeing to forego its incremental taxes on the "Covered Asscts" as defined in said agreement except for those taxes that would be payable to the School System of Hamilton County.

BE IT FURTHER RESOLVED, That the City of Chattanooga expresses its support for EPB's planned investment in an advanced distribution system including a fiber communications system and in its planned Cable TV and Internet Business.

BE IT FURTHER RESOLVED, That the City of Chattanooga acknowledges that increased tax equivalent payments attributable to EPB's new investment in the electric system's advanced distribution system and new investment by the Cable TV and Internet Business Unit may be limited under certain circumstances.

BE IT FURTHER RESOLVED, That the Mayor be and is hereby authorized to execute any and all documents as EPB or TVA may request to document the action taken in this Resolution.

ADOPTED: February 26, 2008

RLN/add



STATE OF TENNESSEE  
COMPTROLLER OF THE TREASURY  
DIVISION OF LOCAL FINANCE  
SUITE 500 JAMES K. POLK STATE OFFICE BUILDING  
505 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243-0274  
PHONE (615) 741-4276  
FAX (615) 532-9237

February 25, 2008

Honorable Ron Littlefield, Mayor,  
and Members of the City Council  
City Hall, 101 East 11<sup>th</sup> Street  
Chattanooga, TN 37402

and

Mr. Joe Ferguson, Chairman,  
and Members of the Electric Power Board  
P. O. Box 182255  
Chattanooga, TN 37422-7255

Dear Mayor Littlefield, Mr. Ferguson,  
and Members of the City Council and Electric Power Board:

On August 21, 2007 our office issued an analysis pursuant to the provisions of Title 7, Chapter 52, Part 602, Tennessee Code Annotated, regarding the feasibility of a business plan which had been submitted to us concerning cable television and internet access services to be provided to customers of the Electric Power Board of Chattanooga. We are now in receipt of a document proposing certain revisions to that plan which has been delivered to our office by Mr. Gregory S. Eaves, Senior Vice President for Finance and Chief Financial Officer, and Ms. Diana L. Bullock, Vice President for Economic Development & Government Relations. As we indicate in our closing paragraph below, these revisions do not require a subsequent report from this office. This letter is to serve as an acknowledgement of our receipt of the information which has been presented by Mr. Eaves and Ms. Bullock.

It appears that the basic difference relates to an alternate method of financing the cable/internet project. There do not appear to be any significant differences in the projections regarding overall financial results, number of customers to be served or rates to be charged. The initial business plan indicated financing could be done through a combination of revenue bonds and inter-division loans. Revenue bonds would initially be issued in the amount of approximately \$35.4 million, and inter-division loans would be subsequently obtained from the electric division in the amount of approximately \$10.4 million. The document which has now been submitted indicates the financing

could also be done completely through inter-division loans, which would be obtained at intervals on an as-needed basis. It is proposed that this method of financing would avoid the traditional up-front issuance costs associated with bonds—which the initial plan estimated would be approximately \$920,000. Although the interest rate on the inter-division loans could be greater than the interest rate which might be experienced by issuing bonds, this is not a certainty because of events currently taking place in the municipal debt environment. Also, total interest costs could possibly be reduced because interest would be charged to the cable/internet project only at such times as the inter-division loans are made. If revenue bonds are issued, interest costs would be incurred on the total amount of bonds sold commencing on the date of issuance.

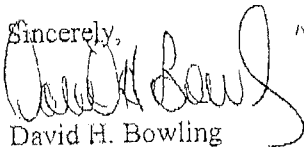
A comparison of the estimates contained in the initial business plan and the proposed revision indicates the following:

Original plan: Debt financing could be through the initial issuance of \$35.6 million revenue bonds maturing over twenty-five years and subsequent inter-division loans in the amount of \$10.4 million; annual net losses in years one through three ranging from \$6.443 million in year one to \$7.023 million in year three; net income and net loss in years four and five, respectively, of \$52,751 and \$501,204; and combined annual net income in years six through ten of \$5.587 million.

Revision: Debt financing could be completely through inter-division loans from the electric division, incurred on an as-needed basis in the approximate amount of \$40.9 million to be repaid over twenty years and incurring interest costs based on at least the highest earnings rate of invested electric system funds, as required by state law; annual net losses in years one through three ranging from \$6.427 million in year one to \$6.585 million in year three; net income and net loss in years four and five, respectively, of \$143,922 and \$296,164; and combined annual net income in years six through ten of \$7.987 million.

The revisions in the document which has been submitted to our office are the result of using an alternative method of financing for the cable/internet project. Since this does not appear to have any material affect on the overall income/expense projections as presented in the business plan originally submitted, there is no necessity for a revised report from this office.

Sincerely,



David H. Bowling  
Director

DHB:laa

Cc: Gregory S. Eaves  
Diana L. Bullock