

STATE OF TENNESSEE 20 <sup>TH</sup> JUDICIAL DISTRICT CHANCERY COURT	<b>SUMMONS</b>	CASE FILE NUMBER
<b>PLAINTIFF</b>  Tennessee Cable Telecommunications Association	<b>DEFENDANT</b> Electric Power Board of Chattanooga <span style="font-size: small;">2007 SEP 21 PM 2:11</span> <span style="font-size: x-small;">CLERK &amp; MASTER DAVIDSON CO. CHANCERY CT</span>	
<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>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>	

FILED

- Method of Service:
- Certified Mail
  - Davidson Co. Sheriff
  - \*Comm. Of Insurance
  - \*Secretary of State
  - \*Out of County Sheriff
  - Private Process Server
  - Other
- \*Attach Required Fees

\*\*\*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)

FILED

2007 SEP 21 PM 2:11

CLERK & MASTER  
DAVIDSON CO. CHANCERY CT.

D.C. & M.

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
AT NASHVILLE

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

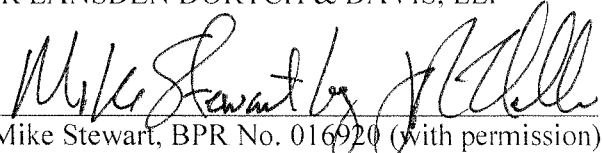
By:



John M. Farris, BPR No. 010435  
Charles B. Welch, Jr., BPR No. 005593  
Jamie R. Hollin, BPR No. 025460  
618 Church Street, Suite 300  
Nashville, Tennessee 37219  
Telephone: 615-726-1200  
Facsimile: 615-726-1776  
Email: jfarris@farris-law.com  
cwelch@farrismathews.com  
jhollin@farrismathews.com

WALLER LANSDEN DORTCH & DAVIS, LLP

By:



Mike Stewart, BPR No. 016920 (with permission) 025460  
Nashville City Center  
511 Union Street, Suite 2700  
Nashville, Tennessee 37219  
Telephone: 615-244-6380  
Facsimile: 615-244-6804  
Email: mike.stewart@wallerlaw.com