

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

BELLSOUTH TELECOMMUNICATIONS, LLC d/b/a AT&T TENNESSEE,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:16-cv-2509
)	Judge Aleta A. Trauger
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al.,)	
)	
Defendants.)	

-----*consolidated with*-----

COMCAST OF NASHVILLE I, LLC,)	
)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:16-cv-2794
)	Judge Aleta A. Trauger
THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, et al.,)	
)	
Defendants.)	

**NASHVILLE ELECTRIC SERVICE’S PRELIMINARY RESPONSE TO
PLAINTIFFS’ AMENDED COMPLAINTS**

In accordance with this Court’s November 21, 2017, Order, and in response to AT&T of Tennessee’s and Comcast of Nashville I, LLC’s, amended complaints, Nashville Electric Service (“NES”) files this preliminary response.

As to the Court’s reasoning and conclusions related to Counts I and III, NES has no legal interest in those claims, as they are asserted against only the remaining

Defendants. As a result, NES takes no position on the Court's reasoning and conclusions as to those counts.

As to the Court's reasoning and conclusions related to Count II, NES takes no position on the Court's reasoning and conclusions as to Plaintiffs' standing and the existence of a private right of action. Furthermore, NES takes no exception to the Court's reasoning and conclusions as to whether the remaining Defendants violated the Metro Charter by enacting the ordinance at issue in the litigation.

In sum, NES has no objection to the Court entering the declaration and injunction sought by Plaintiffs.

Respectfully submitted,

/s/ Will Helou

William N. Helou (#22839)
WSMLEGAL PLLC
2817 West End Avenue, Suite 126-107
Nashville, TN 37203
615.900.5585
whelou@wsmlegal.com

Laura Smith (#1588)
Antonio Carroll (#35076)
1214 Church Street
Nashville, Tennessee 37246
615.747.3701
lsmith@nespower.com
acarroll@nespower.com

Attorneys for Nashville Electric Service

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Preliminary Response* was filed with the Court via the ECF/CM system on December 13, 2017, and that it is anticipated that the Court's electronic system would serve the following counsel of record via electronic delivery on the same date:

<p>William L. Harbison (#7012) John L. Farringer IV (#22783) Sherrard Roe Voigt Harbison, PLC 150 3rd Avenue South, Suite 1100 Nashville, TN 37201 615.742.4200 bharbison@srvhlaw.com jfarringer@srvhlaw.com</p> <p>Christian F. Binnig Hans J. Germann Mayer Brown LLP 71 S. Wacker Drive Chicago, IL 60606 312.782.0600 cbinnig@mayerbrown.com hgermann@mayerbrown.com</p> <p><i>Attorneys for BellSouth Telecommunications, LLC</i></p>	<p>Robb S. Harvey (#11519) Kevin Elkins (#33280) Waller Lansden Dortch and Davis, LLP Nashville City Center 511 Union Street, Suite 2700 Nashville, TN 37219 615.244.6380 robb.harvey@wallerlaw.com kevin.elkins@wallerlaw.com</p> <p>Matthew A. Brill Melissa Arbus Sherry Matthew T. Murchison Latham & Watkins LLP 555 Eleventh Street NW, Suite 1000 Washington DC 2004 202.637.2200 matthew.brill@lw.com melissa.sherry@lw.com matthew.murchison@lw.com</p> <p><i>Attorneys for Comcast of Nashville I, LLC</i></p>
<p>Jeff Campbell (#22455) R. Alex Dickerson (#27184) Christopher M. Lackey (#26419) Melissa S. Roberge (#26230) Assistant Metropolitan Attorneys P.O. Box 196300 Nashville, TN 37219 615.862.6341 jeff.campbell2@nahsville.gov alex.dickerson@nashville.gov chris.lackey@nashville.gov</p> <p>Tillman L. Lay Spiegel & McDiarmid LLP 1875 Eye Street, NW, Suite 700 Washington, DC 20006 tim.lay@spiegelmcd.com</p> <p><i>Attorneys for Metro Defendants</i></p>	

/s/ Will Helou

 William N. Helou (#22839)