

**TAXPAYERS
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September 29, 2014

**The Honorable Thomas Wheeler, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Ajit Pai, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Michael O’Rielly, Commissioner**

**Federal Communications Commission
445 12th Street, SW
Washington, DC 20554**

**In the Matter of
Electric Power Board of Chattanooga, Tennessee
WC Docket No. 14-116**

Dear Chairman Wheeler, Commissioner Clyburn, Commissioner Pai, Commissioner Rosenworcel, and Commissioner O’Rielly:

The Taxpayers Protection Alliance (TPA), representing concerned citizens all across the country, would like to submit the following comment regarding the Chattanooga Electric Power Board’s request to expand their government-funded broadband services beyond the Chattanooga jurisdiction.

**An Overview of EBP’s Failed Government-Owned
Internet, Cable and Telephone Experiment in Chattanooga**

- The total cost of the Chattanooga Electric Power Board’s (EPB) fiber Smart Grid to taxpayers and electric rate payers is at least \$552 million. The Smart Grid is the infrastructure used to provide Internet, cable and telephone services.
- Electric ratepayers pay for every dime of the cost of the Smart Grid not covered by taxpayers, fully subsidizing fiber customers for the cost associated with the infrastructure built largely to provide fiber services.
- Despite paying nothing for infrastructure, EPB’s fiber services are just barely profitable.
- Over its life, the bond issued to partially fund the Smart Grid will cost each of EPB’s 171,975 electric customers \$2,276.

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- EPB received \$111.6 million in American Recovery and Reinvestment Act funds from the pockets of U.S. taxpayers to subsidize the Smart Grid used to provide Internet, video and phone services.
- Only 11 business customers subscribe to EPB's Gig service as of March 2014.
- Despite promises of massive economic development as a result of Chattanooga government-owned fiber scheme, no new jobs have been created.
- It is likely that EPB can't actually provide its famed Gig speed internet service. The utility refuses to agree to public speed tests.
- Though illegal, EPB is apparently engaging in cross-subsidization between its electric and fiber divisions.
- In order to prevent negative information from being released, EPB has coerced an intern, forced an organization to terminate a professional woman and bullied media outlets by threatening to rescind advertising money if critical coverage of the utility was released.
- EPB refuses to comply with Tennessee open records laws, charging obscene fees and delaying the release of public information in an attempt to prevent government records from becoming public.
- The utility currently faces \$16 million worth of lawsuits for fraudulently overbilling taxpayers in three cities a total of \$6.3 million for electric service related to streetlighting.

EBP's Failed Government-Owned Internet, Cable and Telephone Experiment in Chattanooga

When Chattanooga's Electric Power Board (EPB) announced that it was going to construct a revolutionary new power grid that could also provide cable and telephone service, and offer "the fastest Internet in the Western Hemisphere," supporters claimed that the city – and the area's economy – would be transformed forever. The municipal broadband platform guaranteed gigabit per second Internet speeds, causing city leaders to rebrand Chattanooga as the "Gig City."

The reality is that EPB's fiber optic system has failed to create jobs, revitalize Chattanooga's economy or turn the region into a Silicon Valley of the South. Instead, the

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fiber scheme has become a troubling boondoggle, more known for its litany of unmet promises and heaps of unpaid debts than for any benefits it has brought to the city. EPB's entrance into the marketplace as a high-speed Internet and video provider was a peculiarly un-American situation in which a government-owned, taxpayer-subsidized became a competitor to existing private Internet and cable providers. What set EPB's fiber service apart from its private competitors, it claimed, was the utility's interest in providing Chattanooga a locally focused service with better customer service. Since launching its fiber division, however, EPB has become a villain in the community.

The utility is currently embroiled in two different lawsuits claiming, with compelling evidence, that EPB overcharged three municipal governments, including the City of Chattanooga, for the electricity powering streetlights in order to pad its bottom line at the expense of taxpayers.

Further, EPB bullied local media outlets, threatening to pull advertising with print, radio and television outlets which reported stories that cast the utility in a negative light. In at least two cases, EPB went through with the threat. EPB is also guilty of disobeying state open records laws, threatening a college student requesting public records and having the wife of an outspoken critic of EPB's bad behavior fired from her job.

These appalling acts performed against Chattanooga residents and local media have effectively silenced criticism and prevented the truth about EPB's failures to become public knowledge.

Now, as EPB seeks to bypass the state laws that allowed the creation of its fiber services and petition the federal government to expand its service area, the question must be asked: Is it appropriate to expand a project that has failed its existing customers and reward a public utility that has been a bad actor in the community with the opportunity to expand its services?

Clearly, the answer should be a resounding "no."

The Cost of the Smart Grid

EPB delivers fiber services – including its Internet, telephone and television services – through an electricity delivery, maintenance and monitoring network known as a Smart Grid. Smart Grids can be constructed on a microwave radio or a fiber optic platform. These grids offer several practical and reasonable applications for electric providers, all of which can be provided by either a fiber or a wireless system.

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There is little difference in electric service performance between a wireless and a fiber optic Smart Grid. The real difference is price – microwave-based Smart Grids are generally 30 – 40 percent cheaper than fiber optic Smart Grids – and the fact that only fiber-based can provide fiber optic services to customers, including Internet, video and voice offerings.

EPB chose to construct its Smart Grid using fiber optics at a cost of \$360.7 million, a total which does not consider the massive interest charges which will be passed down to taxpayers and EPB electric customers. Harold DePriest, EPB's president, stated that constructing EPB's Smart Grid using fiber optics rather than microwave technology cost an additional \$74 million. Money for the project came from a mix of electric ratepayer-financed bonds, federal stimulus funding, city handouts and existing funds generated by electric ratepayer revenue.

EPB's electric customers will have to pay more than \$391.3 million for the bond used to fund the Smart Grid's construction, including \$219.8 million in principal and \$171.5 million in interest, which must be paid off over the course of a 23 year span. Oddly, even though the Smart Grid infrastructure would have cost \$131.4 million less, including the bond interest, had the system been built without fiber capabilities, revenues generated by EPB's fiber services are not used towards the payment of the bond. In other words, EPB's electric ratepayers have paid for, and will continue to pay, most of the cost of the Smart Grid that allows EPB to provide fiber services.

Over its life, the bonds' \$391.3 million price tag will cost each of EPB's 171,975 electric customers \$2,276. EPB hopes that the Smart Grid will reduce cost to customers by reducing outages and theft – costs that are passed along to customers by EPB – but it remains highly unlikely that those savings will come close to offsetting the cost of the bond to electric ratepayers. Every penny of the cost of the bond that is not offset by energy price savings is a direct subsidy to EPB's telecom scheme.

American taxpayers also paid a considerable amount towards the construction of Chattanooga's fiber Smart Grid infrastructure. EPB received \$111,567,606 in American Recovery and Reinvestment Act funds in order to expand the fiber footprint to its entire service area and speed up the full roll-out of the project by about three years. The stimulus funds were approved in 2009 and fully awarded in 2010.

Since nearly 42 cents of interest has been applied to every stimulus dollar spent by the federal government, \$46.6 million in interest will be added to the original \$111.6 million handout. The total cost of EPB's Smart Grid to U.S. taxpayers is a hefty \$158.2 million.

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Because of per capita funding limits on cities and congressional districts for Stimulus spending, almost all of the Chattanooga area funding went to the EPB Smart Grid grant, leaving more pressing infrastructure projects unfunded.

When the \$391.3 million bond charges, the \$158.2 million federal giveaway and a \$2.5 million local grant courtesy of Chattanooga city taxpayers are summed, the total cost of Chattanooga's Smart Grid is not the \$360.7 million EPB officials claim. It's actually \$552 million.

Chattanooga residents will not be able to escape that hefty price tag. If EPB cannot afford the suffocating bond payments, the electric monopoly will raise electricity rates. Since the city owns EPB, if the utility defaults on its bonds, Chattanooga's taxpayers will have to foot the bill.

Government Invades the Marketplace

Often overlooked in the discussion of EPB's foray into fiber optic telecommunications services is the chillingly anti-market, socialist-style nature of the scheme.

The government-owned electric utility monopoly specifically chose to build its taxpayer- and electric ratepayer-funded fiber Smart Grid system to compete against existing cable, Internet and telephone companies in the marketplace. EPB required taxpayers and electric customers to build the Infrastructure needed to provide Internet, cable and telephone services. As a result, unlike its competitors in the telecom marketplace, EPB's fiber business had to pay absolutely nothing to build its business.

Shockingly, EPB fiber's competitors in the Chattanooga market, such as AT&T and Comcast are forced to subsidize EPB's fiber Infrastructure. Not only do EPB's competitors pay to fund the Smart Grid through federal and local taxes, but every time the companies pay their hefty electric bills, that money helps to pay off the bonds used to construct the system – and, since EPB has a monopoly on electric service in Chattanooga, AT&T, Comcast and other competitors have no choice.

To make matters worse, even though EPB's electric service is legally prohibited from subsidizing its fiber business, it happens constantly. For example, EPB's fiber services have borrowed more than \$28 million in electric revenues to fund customer development and marketing efforts, and to make ends meet when the fiber service was drowning in the red.

Further, when customers call EPB's electric service phone line, they are often pressed to purchase EPB fiber services. EPB utility workers who fix electricity issues such as power outages and downed lines often promote fiber offerings to electric customers. These attempts at acquiring new customers for EPB's fiber services through the electric side are primarily funded when Chattanoogaans pay their electric bills.

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Despite receiving its half-billion dollar infrastructure at absolutely no cost and benefitting from a startling number of examples of cross subsidization from the electric side, EPB's fiber service is still barely staying afloat. In 2011, EPB cleared just \$1.6 million in profit over the course of an entire fiscal year. In its best year to date, the fiber service has yet to top \$5.6 million in profit. If the fiber service were actually forced to pay the cost of the fiber optic infrastructure that EPB custom built to get into the telecom business, it would take decades before it broke even and began to show a profit.

It is clear that if EPB's fiber service were forced to compete on a level playing field, the service would already be bankrupt.

The fact that a government-owned utility company can force taxpayers and electric customers to pay for the cost associated with getting into the cable and telecom business is an affront to the tenets of capitalism and the free market.

Further, the utility's electric revenues have fallen substantially below projections in recent months. As a result, there is less money available for EPB's electric side to loan the fiber side for emergency bailouts, a common practice for the agency. Additionally, there is less money available to meet the massive bond payments required monthly to cover the debt required to build the fiber optic Smart Grid.

It's clear that falling electric revenues, the expense of repaying the bond and the failure of the fiber side to be the cash cow that EPB officials promised will result in either massive hikes in electric prices, default on bond payments (requiring taxpayers to bail out the utility), or both.

EPB's financial predicament is clearly a driving force in requesting the Federal Communications Commission (FCC) to step in and allow the utility to bypass Tennessee state law to expand its footprint. Bailing out a local utility guilty of making a series of poor financial decisions by allowing it to get larger is a truly poor idea.

The Broken Promise of the Gig

EPB and other supporters of Chattanooga's foray into government-owned broadband have long justified the project's half-billion dollar price tag and unnerving government interference into the marketplace by claiming that creating a 1 gigabit-speed Internet service would be a boon for job creation and economic development.

The truth is that the Gig has done little to enrich the Chattanooga area. No companies have relocated to Chattanooga because of the Gig. No new jobs have been created to take advantage of EPB's lightning fast Internet speeds. No economic renaissance has occurred in Chattanooga, despite promises otherwise.

Part of the issue is the price of the Gig service. A residential gigabit per second package is relatively inexpensive, but no residential customer could realistically utilize even a fraction of the capacity of the Gig.

When potential Gig business customers call EPB to request service, however, they are either given an outlandish price quote, or told to instead purchase the 300 Mbps package rather than a single Gig service.

One small business, a video gaming outfit planning to set up a café to allow customers to play the latest games online against each other, requested a Gig service from EPB. The business was told that the Gig service would cost \$50,000 per month; an outrageous sum for a fledgling business.

EPB provides a Gig package to a few businesses in the Chattanooga area – there were 11 commercial Gig customers according to a recent investigation of public records – but, according to research and interviews, none of those customers shell out anywhere near the \$50,000 monthly fee the video game business was asked to pay. That could be because the current Gig customers could never devour a Gig of bandwidth, while the video game enterprise would use hundreds of megabits of bandwidth regularly. EPB's apparent attempts at preventing any companies that could actually benefit from the Gig from purchasing a Gig service option helps to shed light on another reality: There's a good chance that the Gig might not even exist.

To date, there has been no credible evidence to suggest that EPB can provide a gigabit per second of service consistently and reliably. EPB's unwillingness to sell a Gig package to potential customers who could utilize the speed by deterring them with astronomical prices or forcing them to purchase lower-speed packages seems to support that speculation. Also shading doubt on the existence of EPB's Gig is the electric company's unwillingness to agree to public speed tests, and its failure to draw truly cutting edge companies to the area.

Whether EPB can actually provide customers with gigabit service remains in doubt, but what is known is that, despite pouring \$552 million of tax dollars and electric customers' money into a Smart Grid built to provide the fastest Internet in the Western Hemisphere, Chattanooga has remained a ghost town for technological innovation. There is no economic development and there are no new jobs due to the Gig.

And, that is unlikely to change. There are currently more than 20 other cities in the United States able to offer gigabit per second Internet service, so business owners in need of super high-speed Internet service now have their choice of cities in which to locate.

EPB Bullies the Media and Attacks Citizens

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As questions about the legitimacy of the Gig, the lack of economic development produced as a result of EPB's fiber service and the dire financial straits facing EPB surfaced, the utility began to behave less like the taxpayer-owned government agency it is and more like a secret Soviet bureau. Rather than working to address its own problems, the utility began a despicable attack on area residents and local media outlets attempting to look deeper into its inner-workings.

First, an intern for the Taxpayers Protection Alliance, an organization known for researching government-owned networks, filed a number of Tennessee's state version of Freedom of Information Requests. The requests were intended to, among other things, uncover financial documents, customer numbers and correspondence related to EPB's plans to expand its fiber network.

The intern, a senior at the University of Tennessee at Chattanooga, was also performing a second internship during that period with the city's Chamber of Commerce. A top EPB official was, at the time, president of the Chamber's board.

The 20-year-old student was called into her internship supervisor's office at the Chamber and told that if she continued to request public records from EPB, he would see to it that she would not receive the internship credit from the Chamber she needed to graduate at the end of that semester. That internship supervisor who made the threat left the Chamber to take a six-figure managerial position with EPB.

Several weeks after that incident, the opinion page editor at the *Chattanooga Times Free Press* wrote a series of editorials critical of EPB and its fiber services. EPB warned the paper that it would stop purchasing advertisements featuring its Internet, cable and television services if the unflattering coverage continued. After several more pieces appeared casting EPB in a negative light, the utility pulled a number of ads from the paper.

In a six month period prior to that event, EPB purchased \$66,536 worth of ads from the paper. In the six month period after the critical editorials appeared, the EPB purchased just \$22,864 in advertising buys from the *Times Free Press*. In the six months after the opinion page editor left the paper, and negative coverage of EPB was silent from the pages of the *Times Free Press*, EPB's ad purchases from the paper nearly quadrupled to \$82,137.

EPB proposed similar ultimatums to a television channel and WGOW, a Chattanooga-area talk radio station. The television channel stopped any negative coverage of EPB in its local news. The radio station held firm and continued to expose the utility's shortcomings. As a result, EPB no longer advertises with the station.

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When the *Times Free Press*' then-opinion editor continued to expose issues with EPB even after the agency stopped advertising with the paper, EPB then went after the editor's wife, who worked as the marketing director for the large law firm used by the electric utility. The law firm was told that, unless the editor's wife was removed from the law firm, EPB would take its business elsewhere. Since keeping the editors' wife employed at the firm would cost hundreds of thousands of dollars per year if it lost EPB as a top client, the firm was forced to pay off the editor's wife to leave.

Government-Owned Utility Shuns Government Transparency

Recent attempts to obtain open records from EPB have been met with delays and costs that are, according to state open records laws, flagrantly illegal.

One recent records request that would provide evidence of additional instances in which EPB threatened media outlets with the prospect of losing advertising revenues if the outlets released news critical of the utility was met with a 10-week delay and required \$1,770 in fees. When the fees were paid, the requestor of the records was not allowed to make copies of the records. He was also told that, in order to view the records again, he would be forced to pay an additional \$2,000 fee.

Tennessee's Office of Open Records Counsel, the bureau responsible for enforcing state open records laws noted that responding to that request should have taken fewer than seven days and cost less than \$60 in total fees.

Since that request was submitted, a second, even simpler, request for records was made to EPB. The utility responded that to view the documents – which should be allowed at no charge to Tennessee residents – the requestor would have to pay \$2,259.

Chillingly, since EPB began its effort to petition the FCC to expand its fiber division service area, open records requests have almost universally been met with outrageous charges and unconscionable delays. EPB recently responded to two other records requests with demands for \$2,260 and \$2,058 in fees and estimated response times of 60 days and 90 days.

In response to several news stories about EPB's failure to comply with state open records laws, the Tennessee Coalition for Open Government, a government transparency watchdog agency, said, "The runaround [the requestor] received, despite help from the Office of Open Records Counsel and a private law firm, shows the depth of resources and determination possessed by a government-owned entity like EPB to keep the public from looking under its hood . . . there is no quicker way to block a citizen's access to government records than to charge fees."

Because Tennessee's open records laws fail to provide punishments for government agencies that fail to comply with transparency laws, the only recourse is a series of time consuming and expensive lawsuits. Since EPB, of course, would fund any legal battle with money taken from electric customers, it has no reason not to dare government watchdogs, private activists and the media to sue to view public records. EPB apparently wants to block the release of records until after its efforts to expand its fiber footprint through the FCC channels have been completed.

Lawsuits and Allegations of Improper Actions Pile Up

Beyond threatening media outlets, bullying citizens and dodging government transparency rules, EPB has a long history of taking advantage of taxpayers by overbilling local municipal governments for the electricity costs related to streetlighting.

As a result, EPB now faces two lawsuits. One, on behalf of City of Chattanooga residents, seeks \$10 million in damages for violating Tennessee's False Claims Act by knowingly submitting inflated bills for its streetlights, thereby overbilling Chattanooga taxpayers. The second, which asks for more than \$6 million in penalties, was filed on behalf of citizens in the neighboring Hamilton County, Tennessee, communities of Red Bank and East Ridge for inflating streetlight electric bills in those communities, as well.

The whistleblower has documented claims that EPB overbilled the City of Chattanooga by \$5.9 million over a 20-year span – an overbilling of an average of 27 percent for the city's 46,000 lights. The second lawsuit claims that East Ridge residents have been overcharged an estimated \$304,000 by EPB for electricity to streetlights over the past 20 years. During the same time, the whistleblower alleges, Red Bank's government has been overbilled an estimated \$87,000 by EPB.

EPB argued that, while it may have overbilled the city for certain street light billings, it underbilled for others, offsetting the cost of the excess charges. In September, Chattanooga's City Auditor determined that claim was untrue and estimated that EPB did, in fact, overbill the city by as much as \$1.2 million over a seven year period.

The two pending lawsuits claiming, with proof from the Chattanooga City Auditor, that EPB is guilty of overbilling local governments and, thus, area taxpayers, is one more compelling reason why now is not the time to allow EPB the opportunity to serve even more customers.

Conclusion

EPB's fiber optic services, including its high-speed Internet offerings, have been hailed as a shining example of municipal broadband and lauded as a valuable intrusion of government into the private marketplace. In reality, however, the Gig has proven unable to make good on any of its promises.

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Attempts to use EPB fiber services to create an economic renaissance in Chattanooga have failed miserably. Assurances that building an electric Smart Grid capable of providing Internet, cable and telephone services would be a wise investment for federal taxpayer and Chattanooga-area electric customers have proven untrue.

Five years after the hefty expenditures required to build the infrastructure, Chattanooga is no longer unique in offering Gig-speed Internet. It is only unique in how much taxpayers and electric customers were forced to pay to make the service possible.

Further, at the same time EPB is petitioning the FCC to expand its failed fiber division to serve other areas and new customers, its current customers are outraged at the utility's villainous behavior. By working to silence critics and stifle the truth, and fill its coffers by overbilling taxpayers for public electric services, EPB has proven itself a truly bad actor in the community and given other public utilities and government agencies a bad name in the process.

Clearly, there is no reason to reward a shady, deceitful taxpayer-owned utility with the opportunity to expand its fiber-optic fiasco and put even more tax dollars and ratepayers' money on the line.

Regards,



David Williams
President
Taxpayers Protection Alliance
davidwilliams@protectingtaxpayers.org