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February 25, 2000

OFFICE OF THE
EXECUTIVE SECRETARY

BY HAND DELIVERY

Mr. K. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

**Re: Petition of the Tennessee Small Local Exchange Company Coalition for
Temporary Suspension of 47 U.S.C. § 251(b) and § 251(c) Pursuant to
47 U.S.C. § 251(f) and 47 U.S.C. § 253(b).
Docket No. 99-00613**

Dear Mr. Waddell:

Enclosed please find the original and thirteen (13) copies of Petitioner's Brief in Opposition to Consolidation of Docket No. 00-00026 with the above-referenced Docket No. 99-00613.

Thank you for your consideration in this matter. If you have any questions, please do not hesitate to call me.

Very truly yours,



R. Dale Grimes

DRG/cp

Enclosures

cc: Richard Collier, Esq. (w/encls.)
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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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C. J. ...
EXECUTIVE SECRETARY

IN RE:

PETITION OF THE TENNESSEE SMALL LOCAL)
EXCHANGE COMPANY COALITION FOR)
TEMPORARY SUSPENSION OF 47 U.S.C. §)
251(b) AND 251(c) PURSUANT TO 47 U.S.C. §)
251(f) AND 47 U.S.C. § 253(b).)

DOCKET NO. 99-00613

BRIEF IN OPPOSITION TO CONSOLIDATION

Petitioner, the Tennessee Small Local Exchange Company Coalition ("the Coalition"), submits this brief in opposition to the consolidation of the present proceeding with US LEC's request to interconnect with the TDS TELECOM Companies pursuant to 47 U.S.C. § 251(f)(1), which is currently pending in Docket No. 00-00026. In the present petition, the Coalition seeks suspension of interconnection requirements under 47 U.S.C. § 251(b)(1)(2)(4) and (5) of the Telecommunications Act of 1996 pursuant to § 251(f)(2) of the Act until universal service and access reform rules and policies are established at the state and federal levels. The Coalition is also seeking temporary suspension of all requests under § 251(f)(1) to terminate the Coalition members' rural carrier exemption from the interconnection obligations of § 251(c) during the pendency of this proceeding and until the universal service and access reform rules and policies are set. Section 251(f)(2) allows the Tennessee Regulatory Authority ("TRA"), during the pendency of the petition, to "suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers," and the Coalition has requested that interim relief.

US LEC has separately requested interconnection under § 251(a) - (c) pursuant to § 251(f)(1) with four of the fourteen members of the Coalition. These four members are all companies owned by TDS TELECOM, Inc. ("TDS"). US LEC has not formally requested

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consolidation of its interconnection request with this proceeding, but the hearing officer in this case has requested briefing on the option of consolidation. The Coalition opposes consolidation. As discussed in this brief, the separate proceedings should not be consolidated because (1) the issues involved in the proceedings pertain to different legal standards and factual issues and would be difficult to consolidate procedurally; (2) it would be an inefficient use of resources to consider the interconnection request until this proceeding has concluded; and (3) the US LEC request for interconnection is not a “bona fide” request thereby rendering the need for consolidation moot. Rather, as requested in the Coalition’s Petition, the TRA should suspend all interconnection requests until the conclusion of this proceeding and until universal service and access reform policies are determined.

I. CONSOLIDATION WOULD UNNECESSARILY COMPLICATE THIS PROCEEDING DUE TO THE DIFFERING LEGAL, FACTUAL AND PROCEDURAL ISSUES.

Consolidation of the proceedings would unnecessarily complicate the present case because the legal and factual issues pertinent to the two proceedings, while overlapping in some respects, are for the most part very different. Moreover, consolidation would present serious but unnecessary procedural difficulties. Consolidation would complicate these cases, not simplify them.

First, consolidation would turn the present case -- already rife with complicated issues of law and policy -- into a procedural quagmire. The Petitioner in the present case is the Coalition, and individual members of the Coalition are not actual parties to this case. However, four members of the Coalition’s fourteen members are subject to the current US LEC interconnection request. If the cases were consolidated, then the four TDS companies would have to be individually added to this case.

Procedurally, the two cases are on completely different schedules. The present case had a pre-hearing conference in December 1999 to set its discovery schedule. In contrast, no schedule has been set for the US LEC case. In the present case, Petitioner’s discovery has already expired

except as to rebuttal matters. If the two proceedings were consolidated, the scope of discovery would necessarily change, yet the time for the Coalition to issue initial discovery in this case has expired and discovery requests have been issued to the Intervenor, including US LEC. To the extent that the Coalition's discovery requests would be relevant to a § 251(f)(1) proceeding, the Intervenor, including US LEC, objected to that discovery and have provided no information. In the present case, the Petitioner has already submitted its testimony. The Intervenor's testimony is due in a few weeks. The testimony submitted by the Coalition in this case was not directed to the issues that must be determined in a § 251(f)(1) proceeding to terminate a rural carrier's statutory exemption. Thus, consolidation would require backtracking and redoing what has already been done in this case. It would completely frustrate and unduly extend the previously set schedule.

Further, if the US LEC request for interconnection is consolidated with this proceeding, it is conceivable that there would be similar requests to other members of the Coalition in the future that would likewise be consolidated into this one proceeding. Eventually, this proceeding may involve numerous interconnection requests from the different Intervenor and others to different Coalition members resulting in multiple statutory 180-day and 120-day time lines running at staggered intervals.

In addition to the procedural complexities of consolidation, the two proceedings are quite different factually. A proceeding related to § 251(f)(2) is a more general proceeding involving issues common to all members of the Coalition and is targeted at the issue of whether the Coalition members and their customers will be economically harmed if action is not taken to suspend certain interconnection requirements. In contrast, the currently requested § 251(f)(1) proceeding is one involving the specifics of the US LEC request to interconnect with the TDS companies and goes beyond general issues of competition in rural markets. The facts necessary to prove the two cases are fundamentally different as the § 251(f)(1) proceeding does not involve ten of the fourteen Coalition members and will focus on the specific interconnection request of US LEC and on its impact to the TDS companies.

The legal standards in the two cases are also fundamentally different. Under § 251(f)(1), once a “bona fide” request is made, the state commission must conduct an inquiry to determine whether to terminate a company’s rural exemption. Under § 251(f)(1), the carrier has the burden to prove that the interconnection request would be (1) unduly economically burdensome; (2) technically infeasible; and/or (3) inconsistent with principles enumerated in § 254 for the preservation and advancement of universal service. 47 C.F.R. § 51.405. The Coalition’s § 251(f)(2) proceeding requires proof of a significant adverse impact on Coalition members and customers, while the § 251(f)(1) proceeding requested by US LEC only involves impact to the affected company (in this case the TDS companies). Moreover, § 251(f)(2) requires an analysis as to what is consistent with the public interest that is not specifically present in the § 251(f)(1) analysis whereas § 251(f)(1) requires explicit consideration of universal service issues.¹ These statutory sections are side by side yet contain different language obviously intended to incorporate different legal, factual, and public policy issues.

A further and unnecessary level of legal and procedural complexity that would arise in this proceeding should consolidation occur is that the TRA has not defined the process by which a rural carrier’s federal exempt status is to be determined. Such a process should be clearly defined to ensure that due consideration is given to all aspects of the rural exemption and the implications of allowing competition in rural service areas. Many issues surround such a proceeding and represent “uncharted waters” for the TRA, the Coalition, and, presumably, US LEC. Without specific procedural guidelines to help navigate the course, and due consideration of these complex issues, the TRA may unwittingly cause a great deal of economic harm to Tennessee consumers. As the TRA knows, the ramifications of an improper decision are far reaching and could directly impact the ability of the Coalition members to continue to provide universal service throughout their territories.

¹ The Coalition contends that the impact of competitive interconnection on universal service is an important issue in the § 251(f)(2) proceeding.

Consolidation of these proceedings would only frustrate the ability of the TRA to properly “map the course” of such an important proceeding to the consumers in the rural territories of Tennessee. For example, the TDS companies assert that meaningful negotiations under § 252 cannot begin until after completion of the statutorily required rural exemption proceeding, which must be concluded within 120 days of a “bona fide” request. Any negotiations by TDS (or any other Coalition member that may be served with a similar interconnection request) could be construed as a waiver of their federal rural exemption; and, therefore, the 135-day period for voluntary negotiations cannot begin unless the conclusion of such a proceeding were to result in the termination of their rural exemption. The TRA, however, has issued no rules to establish that schedule. Moreover, if TDS has the burden of proof, it must be given guidance on the criteria that the TRA will use to determine whether to terminate TDS’ rural exemption. The TRA, for example, should set forth the criteria and factors it will consider when determining whether an interconnection request is “economically burdensome,” technically infeasible, or inconsistent with the universal service provisions in § 254 before requiring a rural carrier to participate in a proceeding under 47 U.S.C. § 251(f)(1). Further, US LEC (and/or any other requesting party) would have to be compelled to answer all discovery requests related to the interconnection arrangements requested. These are just a few of the points that should be clarified in order for the parties to make a record sufficient for the TRA to carry out its responsibilities under § 251(f)(1). The absence of such clarification necessitates that the cases should be separately considered, and the interconnection request of US LEC, and all like it, should be suspended until resolution of the Coalition’s petition.

II. CONSOLIDATION WOULD BE AN INEFFICIENT USE OF THE TRA’S AND THE PARTIES’ LIMITED RESOURCES.

Consolidation would require the Coalition to litigate the issues concerning the Coalition’s request for suspension or modification of interconnection obligations at the same time that four (and potentially more than four) of its members are not only litigating the exemption issue but also being forced to negotiate the terms and conditions of the specific interconnection request

made by US LEC. Due to the time deadlines set forth in the statute, the TRA would have to confront all these issues simultaneously unless it decides to suspend all requests to interconnect as is clearly allowed by §251(f)(2). The US LEC request will require the parties to negotiate and/or arbitrate the implementation of the very same interconnection obligations the Coalition is simultaneously seeking to have suspended. This would be an inefficient use of resources for all parties involved given that the same personnel of the TDS companies (and potentially other Coalition members) and the TRA staff would necessarily be directly involved in these proceedings. The TRA is no doubt keenly aware of the limited resources available to rural companies to respond to interconnection requests, including undertaking costly rural exemption inquiries. Furthermore, if the TRA grants the Coalition's petition in full (i.e. defer all interconnection requirements until the universal service and access reform proceedings have been concluded), US LEC's interconnection request will be moot, and any time spent on determining the issues raised by US LEC's request will have been wasted.

The § 252 interconnection negotiations that would be required should the exemption be terminated under § 251(f)(1) would be hampered by consolidation. If US LEC's request to interconnect is not suspended and the cases are consolidated, the TDS companies may expend time and resources negotiating and/or litigating interconnection arrangements and implementing network modifications that may be incompatible with a final TRA order in this proceeding and the final resolution of the Universal Service and Access Reform proceedings. Negotiations would be undoubtedly frustrated by the uncertainty surrounding the very basis for negotiation. Moreover, the prospect of a carrier implementing costly network upgrades or modifications to operations support systems in order to meet interconnection obligations that may be modified or suspended is unreasonable for all potential parties.

Consolidation would also financially burden the Coalition members not subject to any interconnection request by increasing their cost of participating in these proceedings. The specifics of any interconnection request (either existing or subsequently served) would not

necessarily affect all of the Coalition members; and, therefore, those unaffected members should not be forced to incur additional legal expenses.

Consolidation would also result in the Coalition, US LEC, and the TRA expending significant resources to determine whether each Coalition member's exemption from the § 251(c) obligations should be terminated each time that a competitor makes a "bona fide" interconnection request pursuant to § 251(f)(1). Consolidation would be further complicating in that it would result in this process being repeated at staggered intervals in this one proceeding for every other interconnection request involving the Coalition members. Suspension of all interconnection requests by the TRA would avoid that unnecessary repetitious process. The public interest would be further served by avoiding this unnecessary administrative burden while the TRA fully maintains authority to later modify or remove the temporary suspension if and when it becomes appropriate to do so. A suspension of all interconnection requests pending a resolution to the Coalition's Petition, as fully allowed under § 251(f)(2), is the most prudent use of resources. Consolidation should not even be an option.

III. THE US LEC REQUEST FOR INTERCONNECTION IS NOT A BONA FIDE REQUEST.

The US LEC interconnection request should not be consolidated with this proceeding or even considered because the US LEC letter submitted to the TDS companies and filed with the Authority does not constitute a "bona fide" request and, thus, is not entitled to consideration under § 251(f)(1). This is an issue that has no relevance to the § 251(f)(2) matter but is a threshold issue of critical importance to the § 251(f)(1) proceeding. The mere designation by US LEC of its request as "bona fide" does not make it so. Only the Authority can designate any request as "bona fide" and thereby impose the burden of proof requirement on the rural carrier or start the clock running on the various deadlines associated with a "bona fide" request. This is yet another example of the type of unnecessary complication of the § 251(f)(2) case resulting from consolidation that will add prolixity and undue expense to this matter.

US LEC's "broad brush" request for all interconnection rights under § 251(b) and (c) does not begin to convey enough information for the TDS companies (or any other Coalition members that might receive a similar request) to properly evaluate the technical feasibility and/or economic impacts of US LEC's request as required under 47 U.S.C. § 251(f)(1)(b), and therefore cannot be deemed "bona fide." US LEC has asked for interconnection with all four TDS companies in Tennessee but does not give any specifics as to the exchanges within those companies where they wish to interconnect. US LEC does not delineate specific services they wish to offer or obtain from TDS. Therefore, the true impact of the request on TDS and its customers cannot be quantified. At a minimum, a "bona fide" request for interconnection that is intended to initiate a state commission determination regarding a company's rural exemption should contain the following:

- (a) the specific dates, exchanges and point(s) within those exchanges where interconnection is desired;
- (b) any desired interface or technical specifications of such interconnection;
- (c) information concerning the type and quantity of unbundled elements requested;
- (d) specific locations of any collocation requested;
- (e) a listing of specific services desired for resale; and
- (f) identification of any switches for which number portability is requested. Without this additional information the Commission will not be able to determine the "bona fides" of the request.

Because such items have not been identified by US LEC in its request, the US LEC request is not bona fide; and, therefore, renders the US LEC proceeding moot as well as the issue of consolidation. Accordingly, the Coalition requests that the TRA reject the notion of consolidation and suspend US LEC's interconnection request until the Coalition's § 251(f)(2) proceeding is resolved.

CONCLUSION

For the reasons stated, consolidation of the present proceeding with the US LEC request for interconnection with the TDS companies should not occur. US LEC has not formally requested consolidation, and the Coalition opposes it. In fact, the Coalition has petitioned for suspension of all interconnection requests. The issues raised in the present case should be determined before any interconnection request is considered, much less consolidated with this § 251(f)(2) proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Dale Grimes", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on February ²⁵, 2000, a copy of the foregoing Brief in Opposition was served on the following persons, via U. S. Mail, postage pre-paid, or via hand delivery, addressed as follows:

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