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November 9, 2000

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EXECUTIVE SECRETARY

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37219

IN RE: *Universal Service for Rural Areas --- The Generic Docket*
Docket No. 00-00523

Dear David:

Please accept for filing the original and thirteen copies of a brief filed on behalf of the Southeastern Competitive Carriers Association in the above-captioned proceeding. Copies have been forwarded to parties of record.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Attachment

POSTED
11-13-00

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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OFFICE OF THE
EXECUTIVE SECRETARY

IN RE: *Universal Service for Rural Areas --- The Generic Docket*
Docket No. 00-00523

BRIEF OF THE SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION

The Southeastern Competitive Carriers Association ("SECCA") submits the following brief concerning three legal issues identified by the pre-hearing officer in his Order of November 8, 2000.

I. Does the Tennessee Regulatory Authority ("TRA") have jurisdiction over toll settlement agreements between BellSouth and rural, local exchange carriers?

The TRA has "general supervisory and regulatory power, jurisdiction and control over all public utilities, and also over their property, property rights, facilities, and franchises" T.C.A. § 65-4-104. The TRA also has explicit jurisdiction over "interconnection" arrangements among "all telecommunications service providers" in order to insure that the terms and conditions of interconnection are "non-discriminatory" and "reasonable." T.C.A. § 65-4-124.

The Tennessee Public Service Commission ("PSC"), predecessor of the TRA, also exercised jurisdiction over the toll settlement agreements between BellSouth and rural, independent carriers. Although the PSC did not require that such agreements be submitted to, or approved by, the agency, the Commission on occasion directed BellSouth and the independents to make adjustments to those agreements. For example, when the Commission ordered the implementation of Metro Area Calling, the agency recognized that the creation of expanded, local calling areas would reduce the

amount of intraLATA toll calling and, of course, the amount of intraLATA toll revenue available for sharing between BellSouth and the independent carriers. The agency therefore directed BellSouth and the independents to adjust their interconnection agreements in order to maintain the independents' revenue streams. No one questioned the PSC's authority to order those adjustments.

Given the agency's broad, statutory authority over utilities, its explicit jurisdiction over the "term and conditions" of interconnection arrangements, and the agency's unchallenged history of exercising that jurisdiction, there is no reasonable doubt that the TRA has authority over toll settlement agreements between BellSouth and independent carriers.

II. Should the toll settlement agreements be considered in this proceeding? If so, how should they be considered?

If and when the TRA decides to develop a universal service mechanism for rural, incumbent carriers, such a mechanism must take into account, among other things, whether the rural carriers are presently earning a just and reasonable return. (Under T.C.A. § 65-5-207(c), the Authority must "determine the financial effect" of the "creation or modification of the universal service support mechanism." The Authority must also consider "intrastate access rates [which could presumably replace the toll settlement agreements]. . . as a significant source of universal service support.") Therefore, any modification to the toll settlement agreements would necessarily have to be considered in determining whether to establish a universal service mechanism for the independent carriers.

SECCA does not, however, take any position as to whether the existing toll settlement agreements should remain in place pending the outcome of this docket.

III. Does the Universal Service Statute Apply to Rate of Return of Regulated Rural Carriers?

In regard to this issue, SECCA reiterates the comments filed in this docket on Sept. 22, 2000:

Under state law, T.C.A. § 65-5-207(a), the TRA's universal service obligations are not triggered until "after the local telecommunications markets are opened to competition."

At this time, the Coalition's members not only continue to be monopoly providers but are strongly opposing effort by competitive, local exchange carriers to enter those markets. It can hardly be argued that there is a need for a universal service fund to be created at this time in order to protect the Coalition's members from a non-existent competitive threat.

Four years ago, the Tennessee Public Service Commission — acting in response to a timetable required by state law — issued an order explaining that there was no need at that time to establish a state USF but that the agency would monitor competition as it developed and measure its impact on universal service.

A similar response may be appropriate here. Some Coalition members may not face any competition in the foreseeable future. Others may face competition within a matter of months. Once the Coalition's members are exposed to competition, the TRA should monitor how competition affects each carrier's rate-of-return and each carrier's ability to maintain service at affordable rates. Even if the independent LECS should have a USF plan that is different from the plan used for BellSouth and UTSE, it makes little sense to adopt a "one size fits all" USF plan for the entire Coalition. And it makes no sense to create any special fund at this time.

SECCA, in sum, endorses AT&T's conclusion that "if these rural local exchange carriers desire to participate in the TRA's universal service fund, then they must first open their markets to competition."

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 9 day of November, 2000.

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