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January 31, 2002

VIA HAND DELIVERY

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

Re: Notice of Rulemaking Concerning Amendments to Chapter 1220-1-2, Practice and Procedure -- Contested Cases, Company-To-Company Complaints, TRA Docket No. 01-00972

Dear Mr. Waddell:

Enclosed please find the original and 13 copies of the Comments of the Tennessee Small Local Exchange Company Coalition for filing in the above-referenced docket. Also enclosed is an additional copy of the Comments, which I would appreciate your stamping as "filed," and returning to me by way of our courier.

Should you have any questions with respect to this filing, please do not hesitate to contact me.

Very truly yours,

R. Dale Grimes

RDG/gci
Enclosures
cc: Certificate of Service List
Mr. Bruce Mottern

TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
NOTICE OF RULEMAKING	)	
CONCERNING AMENDMENTS TO	)	**Docket No. 01-00972**
CHAPTER 1220-1-2, PRACTICE AND	)	
PROCEDURE – CONTESTED CASES,	)	
COMPANY-TO-COMPANY	)	
COMPLAINTS	)	

COMMENTS OF THE TENNESSEE SMALL LOCAL EXCHANGE COMPANY COALITION

The Tennessee Small Local Exchange Company Coalition (the "Coalition"), consisting of (1) Ardmore Telephone Company, Inc.; (2) the Century Telephone Enterprises, Inc. Companies in Tennessee, consisting of (a) CenturyTel of Adamsville, Inc.; (b) CenturyTel of Claiborne, Inc.; and (c) CenturyTel of Ooltewah-Collegedale, Inc.; (3) Loretto Telephone Company, Inc.; (4) Millington Telephone Company, Inc.; (5) the TDS TELECOM Companies in Tennessee, consisting of: (a) Concord Telephone Exchange, Inc.; (b) Humphreys County Telephone Company; (c) Tellico Telephone Company, Inc.; and (d) Tennessee Telephone Company; (6) the Telephone Electronics Corp. ("TEC") Companies in Tennessee, consisting of: (a) Crockett Telephone Company, Inc.; (b) Peoples Telephone Company; and (c) West Tennessee Telephone Company, Inc.; and (7) United Telephone Company, Inc., respectfully submit these comments on the proposed amendments to Chapter 1220-1-2, Practice and Procedure – Contested Cases, Company-to-Company Complaints, filed with the Secretary of State on October 31, 2001. The Coalition has reviewed the Comments filed on behalf of BellSouth on

December 14, 2001 and January 18, 2002, and the Comments filed on behalf of Sprint/United on December 17, 2001, and agrees with their respective views. The Coalition offers the following additional comments.

First, the Coalition agrees with BellSouth that the proposed amendments concerning expedited hearings and interim relief are not necessary. Existing rules already provide the TRA and complaining parties with the tools to expedite matters in appropriate cases. For example, such matters may be addressed specifically in a pre-hearing conference pursuant to Rule 1220-1-2-.12(g). Moreover, pursuant to Rule 1220-1-1-.05, the TRA may waive any rules for good cause, including the need to expedite the disposition of any matter.

Second, the Coalition further believes that expedited treatment of a complaint should be reserved for rare and extraordinary circumstances, and accordingly is best addressed on a case-by-case basis rather than a rule of general applicability. Proposed Rule 1220-1-2-.15, however, permits any company filing a formal complaint to "request an expedited ruling when the dispute directly affects the ability of a company to provide uninterrupted service to its customers or precludes the provision of any service, functionality, or network element." This sentence is potentially ambiguous. The second part, which focuses on disputes that "preclude" the complaining party's ability to provide service, narrows the type of proceedings that may qualify for expedited treatment. However, the first part, which applies when a dispute "directly affects" a company's ability to provide uninterrupted service, could be interpreted quite broadly. The Coalition strongly urges that the rule, if adopted at all, be specifically limited to disputes arising out

of interconnection agreements in which the actions of the responding party have "precluded the provisioning of any service, functionality, or network element." Moreover, the rule should be specifically written to exclude other ordinary industry issues, such as carrier billing disputes and industry billing and/or settlement issues. Such issues are routine in character and should be handled in accordance with existing rules even if a party claims that such a dispute "directly affects" its ability "to provide uninterrupted service to its customers."

Third, the Coalition is gravely concerned about the abbreviated time frames contained in the proposed Rules, which implicate issues of procedural due process and fundamental fairness. These include the requirements of responding to the merits of a complaint within seven (7) days of its filing, and preparing for a hearing on the merits no later than thirty (30) days from filing of the complaint – possibly after receiving only three (3) days notice. The Coalition anticipates that many, if not most, intercarrier disputes will involve complex, technical and operational issues, and that a responding company will be required to devote substantial resources to investigating and responding to the complaint. For smaller companies, this is truly a significant issue. Allowing a mere seven (7) days to respond will severely tax the resources of those companies and provide a major distraction for their operational and administrative personnel. The Coalition agrees with the approach suggested by BellSouth. A company should be required to respond only to the request for expedited treatment of a complaint within seven (7) days, and the hearing officer should thereafter make a determination whether to grant expedited treatment and, if so, establish an appropriate schedule warranted by the

particular facts of the case. Using a "one-size-fits-all" approach to matters that by definition should be of an extraordinary nature will result in unnecessary hardships on Coalition member companies and may raise serious due process concerns.

Fourth, the proposed rules allow complaints and requests for interim relief to be served on the responding party by either hand delivery or facsimile. See Rule 1220-1-2-.15(1)(a), (2)(b). The Coalition believes that for matters of such urgency, hand delivery should be the required method of delivery. Facsimile transmission is simply not sufficiently dependable to ensure that a company receives all pages of a document, that the document received is legible, and that the papers are directed to, and actually received by, the appropriate recipient within the company.

Finally, the Coalition joins with BellSouth and Sprint/United in raising concerns about the standards for issuing interim relief. Those standards should require the requesting party to make no less a showing than would be required for injunctive relief in court pursuant to the Tennessee Rules of Civil Procedure and Tennessee state law. In addition, if a rule such as 1220-1-2-.15(2) is adopted, subparagraph (c) should also be modified to make clear that the party requesting the interim relief always has the burden of proof on establishing the criteria for such relief. Moreover, the Coalition agrees with BellSouth that the TRA does not have authority to issue such relief in any event, whether mandatory or prohibitory, and that the power to enjoin does, and should, rest exclusively with the judiciary.

Respectfully submitted,

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Attorneys for The Tennessee Small Local Exchange Company Coalition

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comments of the Tennessee Small Local Exchange Company Coalition has been served on the following, via U.S. Mail, postage prepaid, on this the 31st day of January, 2002:

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