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March 19, 2002

VIA HAND DELIVERY

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

Re: ***Tariffs to Provide Rate Reductions to Offset a Portion of the 2002 Tax Credit of Ardmore Telephone Company, Inc., Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc., CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Loretto Telephone Company, Inc., Millington Telephone Company, Inc., Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Tennessee Telephone Company, Inc., Citizens Telecommunications Company of Tennessee, Citizens Telecommunications Company of the Volunteer State L.L.C., and United Telephone Company (collectively, the "Companies"), TRA Docket Nos. 02-00125, 02-00130, 02-00131, 02-00132, 02-00133, 02-00134, 02-00135, 02-00137, 02-00138, 02-00139, 02-00140, 02-00141, 02-00142, 02-00143, 02-00144, and 02-00145, respectively.***

Dear Mr. Waddell:

Enclosed please find the original and 13 copies of the Brief of Companies for filing in the above-referenced dockets. Also enclosed are 16 additional copies of the Brief for placement in each of the files for the 16 dockets referenced above. Finally, enclosed is one additional copy of the Brief, 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,

Ross I. Booher

RIB/gci
Enclosures
cc: Mr. Bruce H. Mottern (w/ enclosure)
Mr. Herbert R. Bivens (w/ enclosure)
Ms. Susan Smith (w/ enclosure)
Ms. Desda K. Hutchins (w/ enclosure)
Ms. Lisa Ball (w/ enclosure)
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J. Richard Collier, Esq. (via hand delivery, w/ enclosure)
Timothy C. Phillips, Esq. (via hand delivery, w/ enclosure)

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
TARIFFS TO PROVIDE RATE REDUCTIONS TO OFFSET A PORTION OF THE 2002 TAX CREDIT OF:	)	
	)	**DOCKET NO.**
ARDMORE TELEPHONE COMPANY, INC.;	)	**02-00125**
CROCKETT TELEPHONE COMPANY, INC.;	)	**02-00130**
PEOPLES TELEPHONE COMPANY;	)	**02-00131**
WEST TENNESSEE TELEPHONE COMPANY, INC.;	)	**02-00132**
CENTURYTEL OF ADAMSVILLE, INC.;	)	**02-00133**
CENTURYTEL OF CLAIBORNE, INC.;	)	**02-00134**
CENTURYTEL OF OOLTEWAH-COLLEGEDALE, INC.;	)	**02-00135**
LORETTO TELEPHONE COMPANY, INC.;	)	**02-00137**
MILLINGTON TELEPHONE COMPANY, INC.;	)	**02-00138**
CONCORD TELEPHONE EXCHANGE, INC.;	)	**02-00139**
HUMPHREYS COUNTY TELEPHONE COMPANY;	)	**02-00140**
TELLICO TELEPHONE COMPANY;	)	**02-00141**
TENNESSEE TELEPHONE COMPANY, INC.;	)	**02-00142**
CITIZENS TELECOMMUNICATIONS COMPANY OF TENNESSEE, LLC;	)	**02-00143**
CITIZENS TELECOMMUNICATIONS COMPANY OF THE VOLUNTEER STATE, LLC; and	)	**02-00144**
UNITED TELEPHONE COMPANY	)	**02-00145**

BRIEF OF COMPANIES

Pursuant to the Notice of Filing of Briefs ("Notice"), issued by the Tennessee Regulatory Authority ("TRA") on March 12, 2002, Ardmore Telephone Company, Inc., Crockett Telephone Company, Inc., Peoples Telephone Company, West Tennessee Telephone Company, Inc.,

CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., CenturyTel of Ooltewah-Collegedale, Inc., Loretto Telephone Company, Inc., Millington Telephone Company, Inc., Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Tennessee Telephone Company, Inc., Citizens Telecommunications Company of Tennessee, LLC, Citizens Telecommunications Company of the Volunteer State, LLC, and United Telephone Company (the "Companies"), hereby file their Brief in the above-referenced dockets. As directed in the Notice, this Brief will address the following two issues:

(a) Whether the estimated net tax savings created by the Act 2001 Tenn. Pub. Acts ch. 195) must be flowed through to business customers only in the form of price adjustments to the tariffed rates of telecommunications services, as opposed to tax credits; and

(b) Whether it is appropriate for qualifying companies, particularly rate-of-return regulated companies, to deduct costs for complying with the Act's requirements in such companies' calculation of estimated net tax savings.

I. STATEMENT OF THE CASE

2001 Tennessee Public Acts, Chapter 195 was recently enacted and codified at §§ 67-6-221 and 222 ("Act"). The Act does not reduce ad valorem taxes per se. Instead, it creates a fund to retroactively reimburse telecommunications providers for some portion of ad valorem taxes they previously paid. The Companies are required to pass-through the estimated net property tax savings to their business customers by adjusting their prices to those customers. The Act requires that the Companies adjust their prices to their business customers by an amount equal to a projected net tax savings payment (referred to as an "ad valorem tax equity payment" or simply, "tax equity payment") that the Companies may receive from an ad valorem tax fund ("Fund")

created by the Act. Tenn. Code Ann. §§ 67-6-222(a) and (c). The Fund is authorized to make tax equity payments to the Companies in amounts calculated based on specified percentages of the Companies' ad valorem taxes. Tenn. Code Ann. § 67-6-222(b). However, the tax equity payments are limited by the amount of revenue in the Fund produced by an increase in the sales tax on business long distance calls.

The Companies are required to begin prospectively passing through their projected "net savings" by making "an adjustment in the price" charged to their business customers effective January 1, 2002. Tenn. Code Ann. § 67-6-222(c). The Act requires that the amount of the "net savings," and therefore the price adjustment each Company must make, shall be determined by "each [C]ompanies estimated share of the [tax equity] payments projected by the Department of Revenue." *Id.* The Companies will have the first opportunity to recover the revenues they will lose due to the price adjustments by making a request for reimbursement in the form of a tax equity payment on May 15, 2003. Tenn. Code Ann. § 67-6-222(b). The Companies are then entitled to receive payment from the Fund on or about June 30, 2003 to cover the revenues lost in the first period. *Id.* The size of any Company's tax equity payments to cover the period effective January 1, 2002, depends upon the amount of money that will be in the Fund as of May 15, 2003, the date on which the tax equity payments for the period effective January 1, 2002 must be requested. Whether the Fund will be sufficient to cover the lost revenue is unknown. Based on the size of the first tax equity payment, the Companies may make subsequent price adjustments to their business customers as of October 1, 2003. Subsequent adjustments shall occur annually on October 1, based both on the tax equity payment made on June 30, produced by the balance of the Fund as of the previous May 15 and the projecting of the next year's anticipated tax equity payment. Tenn. Code Ann. § 67-6-222(b) and (c).

On December 20, 2001, the TRA advised the Companies to file tariffs by January 8, 2002 in order to prospectively pass through each carrier's estimated share of the projected net tax savings created by the Act to their business customers, effective as of January 1, 2002. On January 4, 2002, the TRA extended the deadline for the Companies to file tariffs to February 7, 2002.

The Companies filed tariffs designed to prospectively pass through each carrier's estimated share of the projected net tax savings created by the Act. At the time the Companies were required to file their tariffs, the Department of Revenue had not yet made any of the projections on which the Companies' price adjustments were required to be based. As a result, the Companies relied upon their own methodology and projections in order to comply with the TRA's tariff deadline. The Companies' tariffs adjusted the price of telecommunications services to business customers through the use of tariffed monthly credits. Because the tax equity payments are required to be the lesser of the amount a Company is due in reimbursement from the Fund or the amount of money actually in the Fund -- which could fall far short of the aggregate price adjustments made by that Company, the Companies adopted a conservative approach. They proposed to pass along the benefit from the tax equity payment they expect to receive on June 30, 2003, ratably over that eighteen-month period, so that if the Fund projections were inaccurate, the Companies would not suffer a greater revenue/cash flow loss. If the Fund met or exceeded expectations, the Companies would pass along the additional savings through the use of a larger price adjustment credit effective three months later as provided by the Act. In calculating the estimated net tax savings payment, the Companies' tariffs also took into account Title 47, Parts 36 and 69 of the Code of Federal Regulations and the cost of complying with the Act, so that such costs would not have to be shouldered, in part, by residential rate payers.

On or about March 5, 2002, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") intervened in the Companies' tariff filings. *See e.g.,* Consumer Advocate's Complaint and Petition to Intervene dated March 5, 2002. The Consumer Advocate disagreed with the method by which the Companies intended to pass through their projected net tax savings to business customers, *Id.* at ¶¶ 6, 9, and opposed the Companies' inclusion of a deduction for the costs of complying with the Act in their calculations of the estimated net tax savings. *Id.* at ¶ 8. Finally, the Consumer Advocate objected to the fact that some of the Companies intended to spread the business customer price adjustments from the projected tax equity payments over the eighteen-month period ending on the date the Companies first expected to receive tax equity payments. *Id.* at ¶ 5.

On March 12, 2002, the TRA announced a series of decisions related to the Companies' tariff filings. First, the TRA found that the Companies, despite the unavailability of official guidance, created a reasonable methodology to compute the estimated tax savings they hoped to receive and they had accurately applied it. However, the TRA noted that the Comptroller was in the process of creating an official methodology and procedures as required by the Act. Second, the TRA noted that its decisions should not be construed as an endorsement of any particular method of determining the prorata shares of each company. Third, the TRA found that the Companies appropriately applied the price adjustments required by the Act only to services purchased by business customers. Fourth, the TRA held that the projected savings generated by the Act must be flowed through to business rate payers in twelve, rather than eighteen, months. Fifth, the TRA decided that rate of return companies may deduct from the estimated net tax savings the part of their 36/69 costs that are attributable to interstate jurisdiction. Sixth, the TRA held that the sole price-regulated company appropriately refrained from applying for headroom

in its tariff. Seventh, the TRA allowed the Companies to: (a) flow-through the estimated net tax savings over a twelve-month period by giving business customers a one-time lump-sum price adjustment credit in the first price-adjusted bill to account for the time that elapses between January 1, 2002 and the issuance of the first price-adjusted bill or, (b) to spread that same amount of money evenly over the months that remain in 2002 after which time the Companies may adjust the monthly price adjustment credits downward so that each monthly bill contains a price adjustment credit for the standard 1/12 of the annual estimated net tax savings. Finally, the TRA directed the Companies and the Consumer Advocate to file briefs no later than March 19 on the following two issues:

(a) Whether the estimated net tax saving created by the Act (2001 Tenn. Pub. Acts ch. 195) must be flowed through to business customers only in the form of price adjustments to the tariffed rates of telecommunications services, as opposed to tax credits; and

(b) Whether it is appropriate for qualifying companies, particularly rate-of-return regulated companies, to deduct costs for complying with the Act's requirements in such companies' calculation of estimated net tax savings.

II. ARGUMENT

A. The TRA Should Allow the Estimated Net Tax Savings Created by the Act to Inure to Business Customers Through Price Adjustments in the Form of Credits.

Credits are an ideal method of adjusting the price of telecommunications as required by the Act. The Act states that estimated net tax savings, "[s]hall inure to the benefit of business customers of [the Companies] through an adjustment in the price of telecommunications services provided by [the Companies], including business and interconnection services." Tenn. Code

Ann. § 67-6-222(c). The Act is a taxing statute and uses the phrases "adjustment in the price of telecommunications services" and "price adjustment" synonymously (hereinafter together referred to as "price adjustment"). *Id.* There is no indication that this tax statute intended to import the regulatory process of "rate adjustment" set forth in Tenn. Code Ann. § 65-5-209. The Act requires simple price adjustments, not rate reductions. A credit is a form of price adjustment. Although the question posed by the TRA could be read to suggest that a credit is not a price adjustment, nothing in the Act supports this assumption. Price adjustments in the form of credits should be adopted for the following reasons.

First, the plain meaning of the Act's language confirms that a credit is an acceptable type of "price adjustment." The TRA "must examine the language of a statute and, if unambiguous, apply its ordinary and plain meaning." *Carr v. Robertson County*, 29 S.W.3d 466, 771 (Tenn. 2000).[1] The word "price" means "the sum of money or goods asked or given for something." THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 1038 (1970). The word "adjustment" means "the act of making fit or conformable." *Id.* at 16. Thus a price adjustment is the act of making fit or conforming the sum of money or goods asked or given for something. *Id.* It is undisputed that business customers receive monthly bills the bottom lines of which ask for the sum of money for the telephone services they have received. It is undisputed that a credit would conform the sum of money asked of business customers for telephone services as required by the Act. There is no need for the TRA to apply the regulatory gloss of "price adjustments to the tariffed rates" to an otherwise straightforward "price adjustment" actually called for by the Act. Therefore, a "credit" is clearly within the scope of the definition of a "price adjustment."

[1] The plain language of the Act obviates any need to rely on its legislative history. *See, Carr*, 29 S.W.3d at 771. Even the legislative history, however, only contemplates the Act's impact on companies that are likely to benefit from any increased competition that may result from the Act. Thus, the legislative history has no application to the issues posed by the TRA Notice.

Second, it is undisputed that the overall purpose of the Act will be accomplished by using a tariffed credit to pass along the benefit of the tax savings realized from the tax equity payment. The purpose of the Act is to lower the amount of business customers' bills in an amount equal to the estimated net tax savings contemplated by the Act. A price adjustment in the form of a tariffed credit will accomplish this purpose.

Third, credits are flexible. The TRA should adopt a price adjustment method that is flexible so that the amount of savings passed through to business customers can be easily adjusted upwards or downwards on October 1 following the receipt of the tax equity payment. The Act requires that this annual adjustment be based on the size of the tax equity payment that the Companies actually receive. Flexibility is especially important in implementing this Act because it is untested legislation requiring the Companies to reduce their revenues today in anticipation of receiving a "projected" payment eighteen months from now. A price adjustment in the form of a credit offers just that kind of flexibility. If the TRA were to require rate changes, the rate likely would not be able to be adjusted upwards in response to a shortfall in the amount of the actual tax equity payment without the Companies having to file a full rate case. The purpose of this Act was not to increase the administrative burden on the Companies, nor to force revenue reductions on the Companies that cannot be flexibly adjusted. The Companies should not be denied the ability to regularly conform the amount of savings they pass through to their business customers with the amount of tax equity payments that they receive from the Fund.

Fourth, the use of a price adjustment in the form of a credit will dramatically lower the overall implementation costs of the Act. Filing a full rate case typically requires the filing of a significant amount of documents, involves hundreds of hours of administrative work by the Companies, and it costs the Companies tens of thousands of dollars. Filing a credit typically

requires the filing of less than five pages, involves only a few hours, and costs a minute fraction of a full rate case. The simplicity of filing a credit also helps focus all parties on the single purpose of this tax Act: to pass on the estimated net tax saving to business customers -- not to conduct an annual review of the Companies' price regulation plan. The filing of a full rate case is likely to result in more interventions for purposes other than those expressly set forth in the Act. Interventions increase the cost of filings, especially when the filings are complex. The costs of implementing the Act, both financial and in terms of employee time, will ultimately be borne by rate payers. Furthermore, it will be easier for the TRA and the Consumer Advocate to ensure that business customers receive the full measure of the estimated net tax savings contemplated by the Act when a brief credit tariff is used because a credit filing includes the full amount of the estimated net tax savings in one line item and is therefore much simpler to read, understand, and compute.

Finally, a credit is the most fair price adjustment method. A credit can be reduced to help prevent the Companies from "passing-through" more tax savings than they will ever recoup. It is only fair that the Companies be able to limit paying out more in "savings" than they will receive from the Fund. An adjustment method that changes the rates of certain services would result in the Companies having to increase rates whenever the sales tax revenues are overestimated, as will no doubt sometimes happen. Significantly, the only two variables that affect the "price adjustment" called for by the Act are the State's actual past disbursements of the tax equity payments and the projected future tax equity payments. It is entirely reasonable for the Companies to use a narrow credit to implement this narrow adjustment.

Under the Consumer Advocate's view, any increase in rates may require a full rate case. It would be unfair to the Companies to allow this business-specific Act to expose the Companies

to expensive and time-intensive rate cases every time they wish to limit the financial losses that may result directly from this Act. Such a result would also be highly unfair to residential customers since unreimbursed "savings" overpayments and the cost of the rate cases will result in higher operating costs which they will ultimately help bear. The reduced costs that business customers experience as a result of the Act should be paid for by the sales tax collections as the Act states, not by residential customers and the Companies. A price adjustment credit will ensure that the Act's purpose is fully achieved in the most flexible, efficient, and fair manner possible.

B. It is Appropriate for Rate-of-Return Companies to Deduct the Reasonable Costs for Complying with the Act's Requirements in Such Companies' Calculation of Estimated Net Tax Savings.

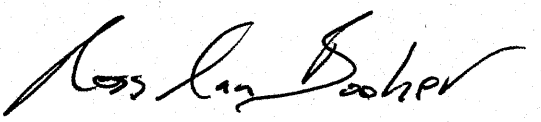
The reasonable costs[2] for complying with the Act's requirements should be included in the calculation of the estimated net tax savings realized by rate of return companies. To deny such deductions with rate of return companies would result in the implementation costs being displaced, not only onto shareholders, but also ultimately onto residential and business rate payers alike. To displace costs associated with implementing the Act onto residential customers and shareholders would be unfair since they receive no benefit from the Act. *Id.* It is only fair that the revenue generated by the Act be used to offset the reasonable and prudent cost of implementing it.

III. CONCLUSION

The Companies ask that the TRA allow the use of a tariffed credit price adjustment and the inclusion of implementation costs with regard to this Act. A tariffed credit is a flexible and fair form of price adjustment that is well within the plain meaning of the language of the Act. It

allows adjustments to be made with a minimum of administrative cost and burden to the Companies and the TRA, and most importantly, the consumers of Tennessee. It permits a true-up process that is essential since the price adjustments are implemented based on projections of tax equity payments to be received retroactively from the Fund which may not materialize. If projections were overstated, it would be unfair to prevent the Companies from adjusting prices upward the next year to recoup what they overpaid. Likewise, the reasonable costs for complying with the Act's requirements should be included in the calculation of the estimated net tax savings realized by rate of return companies so that residential customers are not affected by this business customer-specific Act.

Respectfully submitted,



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Attorneys for the Companies

[2] The amount of expenses each company will incur to comply with the Act will vary. Some of the Companies must outsource the programming and customer education expenses that must be incurred to comply with the Act thereby increasing their cost of compliance.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Brief of Companies has been served upon the following, via the method(s) indicated, this the 19th day of March, 2002:

[✓] Hand
[ ] Mail
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