

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**March 10, 2003**

**IN RE:**

**SMALL TELEPHONE COMPANIES TARIFF FILINGS  
REGARDING RECLASSIFICATION OF PAY  
TELEPHONE SERVICE AS REQUIRED BY FEDERAL  
COMMUNICATIONS COMMISSION DOCKET 96-128**

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**DOCKET NO.  
97-01181**

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**ORDER REQUIRING ADDITIONAL BRIEFING ON THE APPLICATION  
OF 47 U.S.C. § 276 TO THIS CASE AND APPOINTING PRE-HEARING OFFICER**

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, on its own motion at the regularly scheduled Authority Conference held on January 27, 2003.

**Background**

On December 6, 2002, the parties to this action were directed to brief the issue of whether 47 U.S.C. § 276, as interpreted by the Federal Communications Commission ("FCC"), is applicable to this case. After filing the briefs, the parties orally argued the issue before the panel assigned to this case at the January 6, 2003 Authority Conference. The briefs and oral arguments filed by the Coalition of Tennessee Small Local Exchange Companies ("Coalition") and the Tennessee Payphone Owners Association ("TPOA") assert that the application of 47 U.S.C. § 276 to this case is not mandatory because the members of the Coalition are not Bell operating companies

("BOCs").<sup>1</sup>

**The January 27, 2003 Authority Conference**

At the January 27, 2003 Authority Conference, the panel unanimously found that 47 U.S.C. § 276(b)(1)(B) applies to all payphone service providers, including non-BOCs. The panel based this conclusion upon the plain language of 47 U.S.C. § 276(b)(1)(B) which states:

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 9, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that -- . . .

- (B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph A; . . .

The panel also relied upon footnote 80 of the *Memorandum Opinion and Order* issued on January 31, 2002, by the FCC in *In the Matter of Wisconsin Public Service Commission*. Footnote 80 states:

Section 276(b)(1)(B) is somewhat broader than section 276(a)(1) **because it applies to all LECs [local exchange carriers] and is not limited to the BOCs**, as is section 276(a)(1). That distinction explains why Congress included a separate directive to the Commission to eliminate subsidies.<sup>2</sup>

The panel unanimously voted to direct the parties to file briefs addressing the following issues no later than February 26, 2003:

1. Whether 47 U.S.C. § 276(b)(1)(B), which applies to all local exchange carriers, requires cost-based rates?

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<sup>1</sup> The Coalition consists of the following companies: Ardmore Telephone Company, Inc., the Century Tel, Inc. Companies in Tennessee (including Century Tel of Adamsville, Inc., Century Tel of Claiborne, Inc. and Century Tel of Ooltewah-Collegedale, Inc.), Loretto Telephone Company, Inc., the TDS Telecom Companies in Tennessee (including Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc. and Tennessee Telephone Company), the Telephone Electronics Corp. ("TEC") Companies in Tennessee (including Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. and West Tennessee Telephone Company, Inc.) and United Telephone Company, Inc. Millington is not a member of the Coalition.

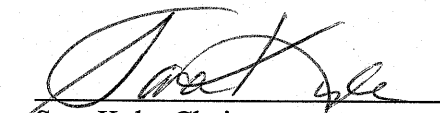
<sup>2</sup> See *In the Matter of Wisconsin Public Serv. Comm'n*, FCC 02-25 (*Memorandum Opinion and Order*) 17 F.C.C.R. 2051, ¶ 34, n. 80 (January 31, 2002) (emphasis added).

2. Whether the previous actions of the TRA in removing subsidies have satisfied the requirements of 47 U.S.C. § 276(b)(1)(B)?

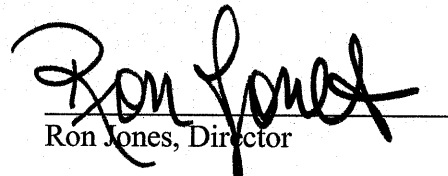
Further, to expedite the resolution of the case, the panel unanimously voted to appoint the General Counsel or his designee as Pre-Hearing Officer in this docket.

**IT IS THEREFORE ORDERED THAT:**

1. The parties are ordered to file briefs addressing the issues stated above **no later than February 26, 2003.**
2. The General Counsel or his designee is hereby appointed to act as Pre-Hearing Officer to address the two issues and prepare this case for a Hearing, if necessary.

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Ron Jones, Director