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May 25, 2001

OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

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

***Re: Small Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission (FCC) Docket 96-128.
Docket No. 97-01181***

Dear Mr. Waddell:

Enclosed please find the original and thirteen (13) copies of the Comments of Coalition of Tennessee Small Local Exchange Companies in Response to Notice of April 24, 2001, for filing in the above-referenced docket. I have also enclosed an additional copy of the Comments, which I would appreciate your stamping "filed," and returning to me by way of our courier.

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

Best regards.

Very truly yours,



R. Dale Grimes

RDG/gci
Enclosures

cc: Guy M. Hicks, Esq. (w/ enclosure)
James B. Wright, Esq. (w/ enclosure)
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**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
SMALL TELEPHONE COMPANIES)	
TARIFF FILINGS REGARDING)	Docket No. 97-01181
RECLASSIFICATION OF PAY TELEPHONE)	
SERVICE AS REQUIRED BY FEDERAL)	
COMMUNICATIONS COMMISSION (FCC))	
DOCKET 96-128)	

**COMMENTS OF COALITION OF TENNESSEE SMALL LOCAL EXCHANGE
COMPANIES IN RESPONSE TO NOTICE OF APRIL 24, 2001**

Pursuant to the request of Director Greer, in his capacity as Hearing Officer, as set forth in the Notice dated April 24, 2001, the Coalition of Tennessee Small Local Exchange Companies (the "Coalition") respectfully submits these comments on behalf of the following companies: (1) Ardmore Telephone Company, Inc.; (2) the Century Tel, Inc. Companies in Tennessee consisting of (a) Century Tel of Adamsville, Inc.; (b) Century Tel of Claiborne, Inc.; and (c) Century Tel of Ooltewah-Collegedale, Inc.; (3) Loretto Telephone Company, Inc.; (4) 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; (5) the Telephone and Electronics Corp. ("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc.; (b) Peoples Telephone Company, Inc.; and (c) West Tennessee Telephone Company, Inc. and (6) United Telephone Company, Inc.

1. How should the Authority set rates for the small incumbent local exchange carriers (ILECs) consistent with Section 276 of the Telecommunications Act of 1996, related FCC orders, and the Authority's decisions in Docket No. 97-00409?

The Authority should not utilize the "new services test" to set rates for paystation access lines (PALs) for the small LECs. While the "new services test" was mandatory for the local

exchange carriers subject to Docket No. 97-00409, *In re: All Telephone Companies Tariff Filings Regarding Reclassification of Pay Telephone Service as Required by Federal Communications Commission (FCC) Docket 96-128*, that test is neither required nor appropriate for the small LECs. Instead, the Authority should set rates for PALs for the small LECs at a level equal to the LEC's basic business (B-1) rate.

In its Interim Order in Docket No. 97-00409, the Authority determined "to set rates that are: 1) compliant with the new services test; 2) consistent with § 276 of the Act; 3) nondiscriminatory; and 4) cost-based." In addition, the Authority held that the rates set in Docket No. 97-00409 must comply with the state statutes, including Tenn. Code Ann. §§ 65-5-208 and 65-5-209 applicable to price-regulated companies and "be consistent with the state's general telecommunications policy established in Tenn. Code Ann. § 65-4-123."¹ However, in this proceeding, the Authority should not use either the "new services test," which is applicable to "price cap companies," nor state statutes applicable to price-regulated companies, to set PALs rates for the rate-of-return regulated LECs.

The FCC's orders and rules make clear that the "new services test" is not applicable to the small LECs. In its proceeding concerning payphone compensation, the FCC required certain LECs to tariff unbundled payphone services consistent with the criteria of the "new services test."² That test requires LECs that introduce new services to establish cost-based rates for the unbundled basic service elements required to provide those new services.³ However, as the

¹ See *Interim Order*, Docket No. 97-00409 (February 1, 2001).

² See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act*, CC Docket No. 96-128, *Order on Reconsideration*, 5 CR (P. & F.) 321, 365 (¶163)(1996) ("Payphone Reconsideration Order"), *Order*, 7 CR (P. & F.) 748, 749 (¶ 2) n.5 (Common Carrier Bur. 1997).

³ See *Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524, 4531 (1991).

Payphone Reconsideration Order makes clear, the “new services test” is set forth in Section 61.49(g)(2) of the FCC’s Rules, 47 C.F.R. § 61.49(g)(2), which applies only to LECs regulated under the FCC’s price cap rules. “[I]ncumbent LECs not currently subject to price cap regulation must submit cost support for their central office coin services, pursuant to Sections 61.38, 61.39, or 61.50(i) of the Commissions rules.”⁴ Sections 61.38 and 61.39⁵ authorize alternative cost support methodologies for rate-of-return carriers, but do not include a “new services test.” Thus Section 61.49 and the “new services test” contained therein do not apply to entities that are not subject to price cap regulation, such as the small LECs that are parties to this docket. Rather, the appropriate costing methodology for rate-of-return regulated companies is that contained in the applicable section 61.38 or 61.39 of the Code of Federal Regulations, which authorizes alternative cost methodologies.

As the Authority has recognized, the cost study requirements associated with the “new services test” would be burdensome on small LECs. The initial decision of the Hearing Officer to bifurcate Docket No. 97-00409 and establish a separate docket for small ILECs was predicated on a finding that the expense of preparing cost studies for the docket would be burdensome on the small independent LECs.⁶ That finding was reaffirmed by the Hearing Officer in the July 31, 2000 decision to continue with bifurcated dockets, stating that “the parties

⁴ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *Report and Order*, 11 FCC Rcd 20541, 20614 (¶146) (1996) (footnote omitted) (“*Payphone R&O*”).

⁵ Section 61.50 of the Code of Federal Regulation has subsequently been deleted. See *1998 Biennial Regulatory Review - Part 61 of the Commission’s Rules and Related Tariffing Requirements*, CC Docket No. 98-131, *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, CC Docket No. 96-187, *Report and Order and First Order on Reconsideration*, 14 FCC Rcd 12293 (1999).

⁶ See Preliminary Report and Recommendation of the Hearing Officer May 29, 1997; Order Establishing a Separate Docket for the Smaller Companies June 6, 1997.

to [this docket] should be spared the expense of preparing and producing cost studies for the sole purpose of establishing pay telephone rates.”⁷

Likewise, it would be inappropriate to apply to these small LECs any provisions of state statutes, such as Tenn. Code Ann. § 65-5-208 and -209, that were intended to govern only price-regulated companies.

In setting the small LECs PALs rates, the Authority should use each LECs B-1 rate as the standard. For each LEC, the B-1 rate is a cost-based rate that was residually determined via the rate-of-return process based on studies and embedded costs, and approved by the Authority when the LEC was last the subject of a rate case. With the coin supervision feature unbundled from the access line rate, PAL and B-1 lines are functionally equivalent service offerings. Adoption by the Authority of this approach would meet the requirements for a nondiscriminatory, cost-based rate that is consistent with § 276. In fact, setting the PALs rates below the B-1 rate would result in rates that are discriminatory with respect to the companies’ B-1 customers.

2. Should the small ILECs be given an opportunity to adopt wholly or partially the cost models used by the parties in Docket No. 97-00409, as adjusted by the Authority?

For the reasons set forth in response to question one, use of cost models based on the “new services test” would be highly burdensome on the small LECs. To do so would require the development of cost studies that the companies typically do not now have and are not required to use for any regulatory reason. As recognized by the Authority, it would be very costly and time consuming for the small LECs to produce such studies. Therefore, it is unlikely that any small LEC would voluntarily elect to use the cost models used by the parties in Docket No. 97-00409.

⁷ See Order of the Pre-Hearing Officer July 31, 2000.

However, to the extent a small LEC may find it beneficial to use such cost models, the Authority should permit, but not require, it to do so.

3. Should the small ILECs be given an opportunity to adopt wholly or partially the permanent rates approved by the Authority in Docket No. 97-00409?

The Authority should permit the small LECs the opportunity to adopt the rates approved in Docket No. 97-00409 if they so choose. Such a course would be appropriate under the FCC's rules. Pursuant to 47 C.F.R. § 61.39, any local exchange carrier which meets the requirements for filing under that section may use an optional method for tariff filings. Accordingly, "rates for a new service that is the same as that offered by a price cap regulated local exchange carrier providing service in an adjacent serving area are deemed presumptively lawful, if the proposed rates, in the aggregate, are no greater than the rates established by the price cap local exchange carrier." Based on this presumption, the small ILECs that meet the requirements for tariff filing under this section⁸ should be allowed to adopt the permanent rates approved by the Authority in Docket No. 97-00409.

4. Will the proceedings for the small ILECs require evidentiary hearings? If so should the hearing be conducted separately or in a consolidated proceeding?

Since the docket involves the setting of rates, evidentiary hearings would be advisable. The scope of any such hearings will depend in large part on the determination of whether the parties must conduct expensive and time-consuming cost studies. It is likely that the proceedings could be consolidated for all companies.

⁸ The rule requires that the company be a subset 3 carrier under 47 C.F.R. § 69.602, which must serve 50,000 or fewer access lines in a study area

5. What procedural schedule should the Authority adopt for the proceedings?

The small LECs believe that the Authority will likely need to adopt a schedule similar to the one used in Docket No. 97-00409, depending on what issues actually must be determined. The Authority should make an early determination that the small LECs are not required to base their rates on the "new services test" or be subject to any other methodology that requires the companies to engage in expensive cost studies. This will serve to clarify these proceedings and streamline the schedule for this Docket.

Respectfully submitted,



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*Attorneys for the Coalition of Tennessee
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Comments of the Coalition of Tennessee Small Local Exchange Companies in Response to Notice of April 24, 2001, was served on the following, via United States mail, postage prepaid, this the 25th day of May, 2001:

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