

LAW OFFICES

GULLETT, SANFORD, ROBINSON & MARTIN, PLLC

230 FOURTH AVENUE, NORTH, 3RD FLOOR
POST OFFICE BOX 198888
NASHVILLE, TENNESSEE 37219-8888

TELEPHONE (615) 244-4994
FACSIMILE (615) 256-6339

GARETH S. ADEN
LAWRENCE R. AHERN III
G. RHEA BUCY
GEORGE V. CRAWFORD, JR.
GEORGE V. CRAWFORD III
A. SCOTT DERRICK
THOMAS H. FORRESTER
M. TAYLOR HARRIS, JR.
DAN HASKELL
LINDA W. KNIGHT
JOEL M. LEEMAN
ALLEN D. LENTZ
JOSEPH MARTIN, JR.
JEFFREY MOBLEY

KATHRYN H. PENNINGTON
WM. ROBERT POPE, JR.
WAYNE L. ROBBINS, JR.
JACK W. ROBINSON, JR.
JACK W. ROBINSON, SR.
VALERIUS SANFORD
MARTY S. TURNER
WESLEY D. TURNER
PHILLIP P. WELTY
JOHN D. LENTZ
OF COUNSEL
B. B. GULLETT
1905-1992

August 11, 2000

VIA HAND DELIVERY


Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

Re: *Rulemaking Proceeding - Regulatory Reform Rules*
Regarding Interexchange Carriers - Rules 1220-4-2-.55(2)
Docket No. 98-00097

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Supplemental Comments of AT&T Communications of the South Central States, Inc. A copy of these Comments has been served upon all known parties of record.

Yours very truly,


Val Sanford

VS/ghc

Enclosures

cc: Susan Berlin, Esq.
Charles B. Welch, Jr., Esq.
Vance Broemel, Esq.
Jon E. Hastings, Esq.
James Wright, Esq.
James P. Lamoureux, Esq.
Garry Sharp

POSTED
8-15-00

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: *Rulemaking Proceeding – Regulatory Reform Rules
regarding Interexchange Carriers – Rules 1220-4-2-.55(2)*

Docket No. 98-00097

SUPPLEMENTAL COMMENTS OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC.

AT&T Communications of the South Central States, Inc. ("AT&T") files these supplemental comments to show that continued price cap regulation of its rates, and those of the other two IXC's, is no longer either legally or factually justified. Such continued regulation ignores the changes in the law and the facts since the adoption of the IXC rules in March 1995 and places AT&T, and the other two certificated IXC's, WorldCom and Sprint, at an intolerable, unfair disadvantage.

In its prior comments filed October 18, 1999, AT&T demonstrated that T.C.A. §65-5-208(b) mandates that the TRA shall exempt telecommunications services from the rate provisions of Chapter 5, Title 65 where existing and potential competition is an effective regulator of the prices of those services; and that such competition is an effective regulator of the prices of the services of AT&T and the other two certificated IXC's. Those points will not be repeated here. Instead, these comments will focus on the realities of the existing market for interexchange interLATA services, where the competitors of the certificated IXC's are unregulated as to their tariffs and rates.

THE PRESENT RULES GOVERNING THE RATES AND TARIFFS OF TELECOMMUNICATIONS PROVIDERS

In order to understand the present structure of the scope of the regulation of the rates and tariffs of telecommunications providers, it is necessary to trace briefly the development of the existing rules. The present rules governing the rates and tariffs of telecommunications providers all have their origin in the efforts of the Tennessee Public Service Commission ("TPSC") to adapt its regulations to the developments in what was the telephone business but is now telecommunications. At present there are three sets of such rules which remain in effect as they were originally adopted by the TPSC; (i) the "regulatory reform" rules in 1220-4-2-.55(1) with respect to "local exchange carriers" filed November 25, 1992, effective January 10, 1993; (ii) Rule 1220-4-2-.55(2) with respect to interexchange carriers, filed March 28, 1995 effective June 13, 1995; and (iii) Rule 1220-4-2-.57 with respect to "resellers", including "operator service providers", filed March 28, 1995, effective June 13, 1995. In addition, there is Rule Chapter 1220-4-8 with respect to "Regulations for Local Telecommunications Providers," filed by the TRA on April 15, 1998 effective June 15, 1998, but which follows the pattern of the TPSC Local Competition Rules originally proposed in 1994.

Each of these rules was adopted in response to a picture of the telecommunications industry as perceived in the early 1990's. Under that picture, there were readily defined, reasonably clear, categories of carriers: (i) the LECs, which enjoyed monopoly status, protected from competition and therefore were subject to comprehensive tariff and rate regulation; (ii) the IXC's, defined as "owning facilities in the state which consist of network elements and switches and other communications transmission equipment," used in intrastate, interLATA communications; (iii) resellers,

defined as common carriers of telephone services other than a facilities-based carrier, that resold services of regulated carriers; and (iv) the emerging competitive local service providers. The existing rules reflect, and are based on, that picture.

The LECs were the traditional telephone companies, regulated under a long established pattern of rate base rate-of-return regulation for public utilities generally, including value of service pricing reflecting policy determinations; *see, e.g., C. F. Industries v. TPSC*, 599 S.W.2d 536 (Tenn. 1980). Beginning in 1988, the TPSC embarked on a course of regulatory reform, traced in Tennessee Cable Television Association v. TPSC, 844 S.W.2d 151, 155 – 158 (Tenn.App. 1992), which culminated in the adoption of the present regulatory reform rules governing LECs, Rule 1220-4-2-.55(1).

The IXCs came into existence as a result of the divestiture of the Bell Operating Companies under the Plan of Reorganization adopted pursuant to the decision of the United States District Court in the AT&T Antitrust case; United States v. Western Electric Co., Inc., 569 F.Supp. 990 (D.D.C. 1983). Under that decision, all Bell territory was divided into LATAs. The Bell Operating Companies were limited to providing intraLATA services. InterLATA service was to be open to competition. Thus, the first Tennessee intrastate interLATA authority was granted to AT&T Communications of the South Central States, Inc. in December 1983 in anticipation of the effective date of divestiture, January 1, 1984. Subsequently, interLATA certificates were granted to MCI and Sprint. Initially, AT&T was subject to rate base rate-of-return regulation, but the rates of other IXCs were not regulated on the basis that the rates of AT&T would serve as an effective cap on the rates of the other IXCs; In re MCI Telecommunications Corporation Petition for Interim Authority and Application for a Certificate of Public

Convenience and Necessity, Docket No. U-84-7311. As competition developed in the IXC market, AT&T was no longer subject to rate base rate-of-return regulation. The present IXC rules were then adopted to reflect the IXC market as perceived in 1994.

Resellers came into existence in the early 1980's as a result of decisions of the FCC. The basic concept of "reseller" was an entity that resold the tariffed services of a regulated carrier. The FCC in its decision to forebear regulation of resellers emphasized that it was self-evident that regulation of the underlying carrier from whom the reseller obtained transmission capacity served as an effective regulator of the rates of resellers; In the Matter of: Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorization Therefor; Second Report and Order released August 20, 1982, paragraphs 4 and 21. Following the lead of the FCC, the TPSC ordered the removal of the prohibition of the resale of intrastate WATS from South Central Bell's tariff, thereby making possible the resale of that service by resellers; In re Tariff Filing to Restructure and Reprice the Wide Area Telecommunications Service (WATS) Offerings, Docket No. U-82-7188 entered February 25, 1983. The TPSC did not regulate resellers until the adoption of the present reseller rules in 1995. Operator-assisted telephone services, which are included in the reseller rules, were, however, regulated pursuant to T.C.A. §65-5-206, adopted by Chapter 75 of the Acts of 1990. Operator-assisted telephone service rates are capped by those of the pertinent "dominant" carrier under the statute and under Rule 1220-4-2-.57(2).

In 1994, the TPSC recognized that competition was inevitability going to develop in the local exchange markets. The TPSC, then, instituted a rulemaking proceeding to adopt rules for such local competition. Before those rules became effective, however, Chapter 408 of the Acts of 1995 was adopted and the TPSC was replaced by the TRA.

Thus, the present rule chapter, 1220-4-8, did not become effective until 1998. Nevertheless, that rule chapter still refers to the "commission," and it still expressly limits the tariff and pricing rule, 1220-4-7.07 to "local service." A chart showing the chronology of the adoption of this rule chapter is attached as Exhibit 1 to these supplemental comments.

This picture of the industry on which the existing rules were based no longer represents existing realities. None of these rules accurately, much less adequately, reflect existing industry conditions or practices, including the changes brought about by the adoption of Chapter 408 of the Public Acts of 1995. Only the certificated IXC's, however, are adversely effected by this situation. The existing rules, and the rules proposed by the TRA staff, continue to place rates of certificated IXC's under price cap regulation, while the rates of the competitors of such IXC's are unregulated.

THE EFFECT OF CHAPTER 408 OF THE PUBLIC ACTS OF 1995 ON TELECOMMUNICATIONS PROVIDERS

Chapter 408 drastically revised the regulation of telecommunications providers and services in Tennessee. Under Chapter 408 there are only two categories of telecommunications service providers: (i) "incumbent local exchange telephone companies" defined in T.C.A. §65-4-101(d) as " 'Incumbent local exchange telephone company' means a public utility offering and providing basic local exchange telephone service as defined by §65-5-208 pursuant to tariffs approved by the commission prior to June 6, 1995"; and (ii) "competing telecommunications service providers" defined in T.C.A. §65-4-101(e) as " 'Competing telecommunications service provider' means any individual or entity that offers or provides any two-way communications service,

telephone service, telegraph service, paging service, or communication service similar to such services and is certificated as a provider of such services after June 6, 1995 unless otherwise exempted from this definition by state or federal law.”

Under T.C.A. §65-4-201(b) and (c) the only certificates which the TRA is authorized to issue with respect to telecommunications services are to “competing telecommunications service providers”;

(b) Except as exempted by provisions of state or federal law, no individual or entity shall offer or provide any individual or group of telecommunications services, or extend its territorial areas of operations without first obtaining from the Tennessee regulatory authority a certificate of convenience and necessity for such service or territory; provided, that no telecommunications services provider offering and providing a telecommunications service under the authority of the authority on June 6, 1995, is required to obtain additional authority in order to continue to offer and provide such telecommunications services as it offers and provides as of June 6, 1995.

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

- (1) The applicant has demonstrated that it will adhere to all applicable authority policies, rules and orders; and
- (2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

The adoption of this new provision concerning the granting of certificates of convenience and necessity has several effects on the previously existing regulatory system as reflected in the still existing rules.

First, under the last clause of T.C.A. §65-4-201(b) AT&T, MCI (WorldCom) and Sprint, the only certificated IXCs, were not required to obtain new certificates, but new certificates could be granted only to "competing telecommunications service providers." Thus, with the adoption of Chapter 408 there have been no further IXC certificates as such, and there will be no further such certificates. The rules regulating the tariffs and rates of IXCs, Rule 1220-4-2-.55(2), by their express language relate only to such IXCs (AT&T, WorldCom and Sprint) and are not applicable to other carriers even though such other carriers have the authority under Chapter 408 to provide, and are providing, the same services.

Second, "competing telecommunications service providers," could be granted certificates to provide interLATA interexchange services, the same services as authorized and provided by IXCs. As discussed below, numerous such certificates have been granted. However, since the Local Competition Rules and specifically Rule 1220-4-8.07 governing tariff and pricing requirements relate by express language only to local services, there is no rule regulating the tariffs and prices of "competing telecommunications service providers" providing interexchange interLATA services. Thus, the rates and tariffs of such "competing telecommunications service providers," for interLATA interexchange services are unregulated.

Third, the definition of "telecommunications service provider" is based on the provision of services, not on the ownership or construction of lines, plants or other facilities. Thus, "competing telecommunications service provider" is not limited to

facilities-based carriers, but by express statutory definition includes any entity offering or providing the listed telecommunications services. Thus, numerous certificates have been granted to competing telecommunications service providers including authority to function as resellers.

Fourth, it is highly doubtful to say the least that the TRA has authority under the present statutes to grant certificates of convenience and necessity to “resellers” as such, other than possibly “operator-assisted telephone service providers” under T.C.A. §65-5-206. No statute ever expressly authorized the granting of certificates of convenience and necessity to resellers. The prior certificate statute, now codified as subsection (a) of T.C.A. §65-4-201, was expressly based on the construction of lines, plants, etc., i.e. facilities; and, thus, did not apply to resellers. The present reseller rule was adopted, not under the statute authorizing the granting of certificates, but pursuant to the general, regulatory powers of the then TPSC. However, the express language of the present statute, based not on facilities but on services, and expressly authorizing only competing telecommunications service providers’ certificates would now appear to preclude the granting of certificates to resellers as such.

As a result of the foregoing changes in the regulation of interLATA interexchange services in Tennessee intrastate commerce, only AT&T, WorldCom and Sprint are subject to price cap regulation, or would be subject to such regulation pursuant to the staff’s proposal. Their competitors whether certificated as competing telecommunications service providers or as resellers are unregulated with respect to their rates and tariffs.

THE FACTUAL CHANGES IN THE STRUCTURE OF THE TELECOMMUNICATIONS INDUSTRY

The reasonably clear boundaries between categories of carriers reflected in the existing rules were already beginning to become less clear by 1995 and the adoption of Chapter 408 by the Tennessee General Assembly. The adoption of the Federal Telecommunications Act in February 1996, however, and the rapid technological developments since that date, including wireless and the internet, have drastically altered the structure of the telecommunications industry. Not only has the law changed, as discussed above, but the factual basis for the rules has also changed.

The Growth in interLATA Facilities and Wholesale Operations

In 1995 only AT&T, MCI and Sprint had interLATA network facilities in Tennessee. As pointed out in AT&T's prior comments and supplemental filings, several other carriers now have, or are constructing, extensive network facilities in Tennessee. The networks of Williams Communications, Qwest Communications Corp., IXC Communications (now Broadwing), Level 3 Communications, Frontier Corp. (now Global Crossing) and Cable and Wireless are described in AT&T's Comments filed October 18, 1999 at pages 9 *et seq.*, at tab 7 of AT&T's supplemental submission filed October 18, 1999 and in AT&T's supplemental filing made March 14, 2000.¹ Suffice it to say here that

¹ Note that Level 3 Communications, LLC, in Docket No. 98-00610, was issued a competing telecommunications service provider certificate to provide facilities-based and resold local exchange and interexchange services through Tennessee; Williams Communications, Inc. d/b/a Vyvx, Inc. in Docket No. 99-00398 was granted a certificate including interexchange interLATA services, stating that it intended to construct extensive fiber optic facilities in Tennessee; LCI International Telecom Corp., in Docket No. 96-00783 was granted a certificate including all services that may be provided by a competing telecommunications service provider, and that carrier was subsequently acquired by Qwest.

these networks provide an extensive market for facilities for interLATA communications in Tennessee. That market is not regulated by the TRA (and should not be). There is no means for the TRA to know what carriers are using what facilities under what terms and conditions. For example, particular fiber may be sold to a carrier, or a carrier may be granted an indefeasible right of use as to particular fibers, or particular fibers may be leased for a specified term, or capacity may be leased, or there may be other arrangements or contracts for the use of fiber or capacity. At what point under such arrangements does a carrier become “facilities-based,” or be said to own facilities? The wide variety of such arrangements precludes fitting them within the old categories. Likewise, there is nothing to prohibit a certificated reseller under the existing reseller rules from obtaining the use of transmission facilities from a wholesaler rather than from a regulated IXC. Thus, an indeterminable volume of interLATA services are being rendered in Tennessee outside the scope of the present rules governing the regulation of IXCs.

The Varying Authority Granted to Competing Telecommunications Service Providers

By statutory definition, “competing telecommunications service provider” includes the full range of telecommunications services subject to regulation by the TRA.² The certificates granted to competing telecommunications service providers reflect that range. For example, on December 3, 1999, Worldwide Fiber Networks was granted a certificate to offer “facilities-base interexchange telecommunications services throughout the State of Tennessee” providing high capacity interexchange transport and “may provide

² Certificates are granted to “competing telecommunications service providers” pursuant to the statute, T.C.A. §65-4-201(b) and (c) and not as limited by the local competition rules or any rule.

broadband services,” with the usual exclusion of areas served by small incumbent local exchange telephone companies. A copy of that Order is attached as Exhibit 2 to these supplemental comments.

On May 22, 2000, Kentucky Data Link, Inc. was granted a certificate to provide intrastate telecommunications services as an interexchange carrier in Tennessee, to offer intrastate telecommunications services over its own facilities and to provide leased capacity to “interexchange carriers, competitive access providers, cable television providers, competitive local exchange companies and others who desire to purchase services from it.” A copy of that Order is attached as Exhibit 3 to these supplemental comment.

Numerous certificates have been granted that included resold and facilities-based interLATA interexchange services, *see, e.g.,* Intermedia Communications of Florida, Inc., Docket No. 96-00942; Teligent, Inc., Docket No. 98-00210; P.V.Tel of Tennessee, LLC, Docket No. 98-00802; Aeneas Communications, LLC, Docket No. 99-00415; Access Integrated Networks, Inc., Docket No. 99-00644; CapRock Telecommunications Corp., Docket No. 99-00852; BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc., Docket No. 99-00789; MGC Communications, Inc., Docket No. 99-00993; CTSI, Inc., Docket No. 99-00918; and New Edge Network, Inc. d/b/a New Edge Networks, Docket No. 99-00714.

Certificates as competing telecommunications service providers have also been granted to offer resold interexchange services; *see, e.g.,* CCCTN, Inc. d/b/a Connect!, Docket No. 99-00854; TriVergent Communications, Inc., Docket No. 99-00806; and AllTel Communications, Inc., Docket No. 99-00149.

Some certificates have been granted solely for local exchange service, or data services, or other specific services. In general, orders granting certificates in 1999 and 2000 have merely granted the applications as applied for, reciting in the body of the order the services proposed by the applicant. The earlier orders typically repeated in the ordering part the services as proposed by the applicant in the body of the application.

This pattern of granting competing telecommunications service provider certificates is consistent with the broad statutory definition of that category of services. To the extent such certificates include competing local exchange telephone services, the rates and tariffs of such services would be subject to Rule 1220-4-8-.07. Otherwise, the services of competing telecommunications service providers are not subject to any rule as to their rates and tariffs. The result is another indeterminable volume of interLATA service being rendered in Tennessee without being subject to regulation as to rates and tariffs.

The "Resale" Of Facilities Of Entities Other Than Certificated IXC's

The reseller application form has a line asking, "What facility-based network(s) will the applicant be reselling?" Numerous reseller applications have indicated that the applicant would be reselling "networks" of carriers other than, or in addition to, one of the three certificated IXC's. For example, the following applications indicated the resale of "Qwest" network: ACS Systems; Big Planet, Inc.; ACN Communications Services, Inc.; and Columbia Telecommunications, Inc. d/b/a aXessa. The following applications indicated the resale of "Cable & Wireless": Comdata Telecommunications Services, Inc.; Airnex Communications, Inc.; and ConnectOne Communications Corporation. The following applications listed Broadwing or IXC: America One Communications, Inc.;

Advantage Telecommunications Corp.; Access Point, Inc.; Access One, Inc.; RRV Enterprises, Inc. d/b/a Consumer Access; ATCALL, Inc.; and Catholic Telecom Inc. The following applications listed Frontier or Global Crossing: ACS Systems, Inc.; TDS Long Distance Corp.; American Long Lines, Inc.; Colorado River Communications Corp.; ACN Communications Services, Inc.; and Access One, Inc. Cincinnati Bell Telecommunications Services, Inc. listed Cincinnati Bell Long Distance as its underlying carrier. The foregoing is merely a sample of the applications filed and does not purport to be anywhere near complete. It does, however, represent the nature of numerous applications filed.

AT&T is not aware of any means of determining from public records what networks are actually being "resold" by any reseller. However, the foregoing list is indicative of a general perception that resale is not limited to the resale of services of certificated IXCs; and, presumably, resellers are actually using the networks of carriers other than the three certificated IXCs. The result is that there is no longer any basis for the original concept that the regulation of the underlying carrier obviates any need to regulate the rates and tariffs of resellers. More significantly, once again, the three certificated IXCs are faced with another source of unregulated competition.

CONCLUSION

The recent policy statement of the FCC and the FTC concerning advertising for long distance services succinctly states the facts as to competition in the long distance markets:

In recent years there has been an explosion in competition and innovation in the telecommunications industry. Long-distance customers have reaped substantial benefits in the form of greater choice in deciding which carrier to use and a greater diversity in the prices charged for those calls. For example, dial-around (or "10-10") number allow consumers to bypass or "dial-around" their chosen long-distance carrier to get a better rate in certain circumstances. Consumers also can opt for calling plans that offer a fixed per-minute rate during certain hours or on particular days.

Joint FCC/FTC Policy Statement for the Advertising of Dial-Around and Other Long-Distance Services to Consumers, 65 Federal Register 44053, July 17, 2000.

From the ample demonstration of the facts heretofore presented, the conclusion is clear and inescapable, competition is an effective regulator of the rates of interLATA long distance services. Customers have numerous alternatives, under all sorts of pricing, and they take advantage of those alternatives.

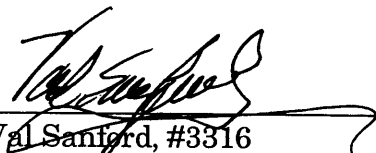
Continued price cap regulation of the IXC's can no longer be justified, factually or legally.

Moreover, as these supplemental comments demonstrate, the factual and legal bases for the present IXC rules, and the staff's proposal to continue their essential nature, no longer exists. The IXC rules were adopted by the TPSC before the enactment of Chapter 408 of the Acts of 1995. They were based on the law and the facts as they existed at the time of the IXC rulemaking hearing. Chapter 408 changed the basic legal structure, creating a new category of carrier "competing telecommunications service

provider.” Numerous certificates have been issued to such carriers authorizing the provision of interLATA telecommunications services, both facilities-based and as resellers. A whole new category of unregulated wholesale providers has developed, with extensive networks in place and planned in Tennessee. The nature and basis of resale has been changed. The result is that the three regulated IXC's, AT&T, WorldCom and Sprint, face a host of competitors unregulated as to tariffs and prices.

Under these circumstances, no legal or factually justified basis exists for continuing the system of price cap regulation either in the existing IXC rules or as proposed by the staff. The proposed revision to Rule 12204-2-.55(2) as filed by AT&T on October 18, 1999 is justified and should be approved.

Respectfully submitted,




Val Sanford, #3316
GULLETT, SANFORD, ROBINSON & MARTIN, PLLC
230 Fourth Avenue North, 3rd Floor
P.O. Box 198888
Nashville, TN 37219-8888
(615) 244-4994

James P. Lamoureux, Esq.
AT&T
Room 4068
1200 Peachtree Street N.E.
Atlanta, GA 30309
(404) 810-4196

Attorneys for AT&T Communications of the
South Central States, Inc.

CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that a copy of the foregoing Supplemental Comments of AT&T Communications of the South Central States, Inc. was served on the following persons via United States Mail, Postage prepaid and addressed as follows, this 11th day of August, 2000.



Val Sanford

Vance L. Broemel
Assistant Attorney General
Consumer Advocate Division
425 5th Avenue, North
Nashville, TN 37243

Jon Hastings
Boult, Cummings, Conners & Berry
P. O. Box 198062
Nashville, TN 37219

Susan Berlin
MCI
780 Johnson Ferry Rd., Ste. 700
Atlanta, GA 30342

James Wright
United Telephone-Southeast, Inc.
14111 Capital Blvd.
Wake Forest, NC 27587

Charles B. Welch
511 Union Street
Suite 2400
Nashville, TN 37219

Local Competition Rules – Chronology

12/93	Directive from the TPSC to its Staff to develop and issue a request for comments concerning competition in the local telecommunications service market and appropriate rules to govern this competition.
1/14/94	Notice of Inquiry for the purpose of considering local telecommunications service competition rules was sent to all telephone companies, long distance and local, all consumer groups, broadcasting and cable associations, local & state government officials and all interested parties known to the Commission. Comments by 3/15/94.
6/94	TPSC conducted 3 informal technical conferences.
6/30/94	TPSC files proposed local competition rules with the Secretary of State.
7/94	Proposed rule draft had not been formally reviewed by the TPSC, was published in the TAR as was a Notice of Proposed Rulemaking Hearing
7/05/94	Notice of Rulemaking Rules Proposal – Hearing to be 8/17, 18, & 19. This rule will be properly noticed in the TAR on 7/15/94. Comments by 8/1/94.
7/15/94	Published in TAR – Notice of Rulemaking Proceeding.
8/17/94 8/18/94	Original proposed and revised rule versions discussed at an informal meeting and discussion period.
8/31/94	Official Notice of Hearing – Local Competition Rulemaking on 9/6 & 9/7.
9/06/94 9/07/94	Formal Rulemaking Hearing. TPSC sub-group developed a revised version of the rule for final TPSC review.
12/02/94	TPSC Staff drafting sub-group revisions and recommendation on rule language.
12/06/94	TPSC considered revised rule chapter proposal at its Commission Conference – concluded it should be adopted. Several motions requesting continuance but agreed to reconsider the rule chapter at the next Commission Conference.
12/30/94	TPSC Conference -- approved
1/04/95	TPSC sends to the Attorney General two sets of rules lawfully promulgated and adopted by the TPSC on 12/30/94: 1) long distance; 2) local telecommunications providers.
6/06/95	P.Ch. 408, 1995 becomes effective.
6/26/95	TPSC Gen. Counsel, Jeanne Moran, memo to commissioners. <u>Background:</u> P.Ch. 408, Public Acts 1995 requires revision of the Rule Chapter re local telecommunications service providers promulgated by the TPSC in 12/94. It had been under review of the Attorney General's office since that time but had been informally returned to the TPSC for typographical and formatting corrections. Staff recommends the TPSC on its own motion reconsider promulgation of the Rule Chapter and adopt new language in light of the newly passed legislation. Further recommends the Rule Chapter not be formally withdrawn – had not been filed with the Secretary of State with an effective date established.

6/27/95	TPSC denied AT&T/Hyperion Petition to Institute Rulemaking Proceeding and on its own motion voted to reconsider the pending rules.
6/27/95	Notice of Amended Rule. As a result of P.Ch. 408, 1995, TPSC modified 1220-4-8, approved 12/30/94; to conform with recently enacted law, effective 6/6/95 Motion to Reconsider and Amend.
7/13/95	Notice of Hearing on 8/1
8/30/95	Notice of Hearing Re-schedule to 10/3 from 9/19
9/25/95	Technical Conference/Informal Rule Discussion
9/29/95	Notice of Rulemaking Hearing Procedure. Hrg. on 10/3
10/03/95	Hearing
12/19/95	TPSC Conference – approved proposed rules
12/29/95	Proposed Rules filed with Attorney General.
1/01/96	According to P.Ch. 408, 1995 rules to be promulgated by this date.
2/01/96	Federal Telecommunication Act of 1996
3/28/96	TPSC Request for Comments in Docket 94-00184 by 4/8/96 on Staff's proposed changes.
4/10/96	TPSC Staff, Chris Klein memo to the Commissioners – initial summary of the comments and recommendations.
4/24/96	TPSC, Chris Klein memo to Commissioners. Considered other late-filed comments – Staff's recommended revisions unchanged from those released 4/10/96.
4/30/96	TPSC Conference consideration of rules. Approved changes to conform with federal act.
5/17/96	Order – adopts changes to Rule Chapter 1220-4-8 as proposed by the Staff, with the exception of rule subsections 1220-4-8.11 (1)(b) and (3) which are adopted as shown herein, and the same are hereby incorporated into Rule chapter 1220-4-8 as sent to the Attorney General on 12/29/95.
5/23/96	Rules forwarded to Attorney General
6/28/96	TPSC Order – Rulemaking Docket 94-00184 terminated.
6/28/96	TPSC Concise Statement for its Actions in Adopting Rules (Received by GSRM 8/21/96)
2/07/97	Attorney General Burson approved the rules.
3/28/98	TRA Conference, consideration of withdrawal of Rules 8, 10 & 11 – approved; voted to initiate a new rulemaking docket to establish rules for the topics being withdrawn.
4/03/98	Notice, Rules 8, 10 & 11 withdrawn
4/03/98	Rules filed with Secretary of State, effective 6/15/98
5/15/98	TRA Rulemaking Hearing Rules published in TAR

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

DECEMBER 3, 1999

IN RE:

**APPLICATION OF WORLDWIDE FIBER NETWORKS,
INC. FOR A CERTIFICATE TO PROVIDE FACILITIES-
BASED INTEREXCHANGE SERVICES IN TENNESSEE**

)
)
) **DOCKET NO. 99-00556**
)
)
)

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On November 30, 1999, this matter came before the Tennessee Regulatory Authority ("Authority") upon the Application of Worldwide Fiber Networks, Inc. for a Certificate to Provide Facilities-Based Interexchange Services in Tennessee ("Application"). The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

The Application of Worldwide Fiber Networks, Inc. ("WFN") was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the

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construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the hearing.

WFN'S HEARING

WFN's Application was uncontested. At the hearing held on November 30, 1999, WFN was represented by Mr. Michael Bressman of Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219. In addition, Ms. Julie R. Hawkins, WFN's Assistant General Counsel, presented testimony and was subject to examination by the Authority's Directors. Upon WFN's conclusion of proof in its case, the Authority granted WFN's Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. WFN is a corporation organized under the laws of the State of Nevada on June 12, 1998 and was qualified to transact business in Tennessee on July 8, 1999.

2. The complete street address of WFN's principal place of business is 143 Union Boulevard, Suite 300, Lakewood, Colorado 80228. The phone number is (303) 987-1770 and fax number is (303) 987-1471. WFN's counsel is Michael Bressman, Boulton, Cummings, Connors & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219.

3. The Application and supporting documentary information existing in the record indicate that WFN has the requisite technical and managerial ability to provide facilities-based interexchange telecommunications services within the State of Tennessee. Specifically, WFN's management has extensive expertise in the telecommunications industry, including numerous years of experience designing, engineering and developing communications networks. In addition, WFN is currently authorized to provide telecommunications services in fifteen states.

4. WFN has the necessary capital and financial ability to provide the services it proposes to offer.

5. WFN has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

1. WFN intends to offer a facilities-base interexchange telecommunications services throughout the State of Tennessee. WFN will provide high capacity interexchange transport and may provide broadband services.

2. Except as may be authorized by law, WFN does not intend to serve any areas currently being served by an incumbent local telephone company with fewer than 100,000 total access lines where local exchange competition is prohibited pursuant to Tenn. Code Ann. § 65-4-201(d).

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Authority finds that approval of WFN's application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

1. WFN has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. WFN has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. The Application of Worldwide Fiber Networks, Inc. for a Certificate of Public Convenience and Necessity is approved;

2. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order; and

3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:



K. David Waddell, Executive Secretary

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

MAY 22, 2000

IN RE:

**APPLICATION OF KENTUCKY DATA LINK, INC.
FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO PROVIDE
INTRASTATE TELECOMMUNICATIONS
SERVICES AS AN INTEREXCHANGE CARRIER**

DOCKET NO. 99-00408

**ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

On March 28, 2000, this matter came before the Tennessee Regulatory Authority ("Authority"), upon the Application of Kentucky Data Link, Inc. ("Kentucky Data Link") for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services as an Interexchange Carrier in Tennessee (the "Application"). The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

LEGAL STANDARD FOR GRANTING CCN

Kentucky Data Link's Application was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the

construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.

In addition, pursuant to Tenn. Code Ann. § 65-5-212, competing telecommunications providers are required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses and (2) information on programs that might provide technical assistance to such businesses.

INTERVENORS

Public notice of the hearing in this matter was made by the Authority's Executive Secretary, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the hearing.

KENTUCKY DATA LINK'S HEARING

Kentucky Data Link's Application was uncontested. At the hearing held on March 28, 2000, Kentucky Data Link was represented by Mr. Henry Walker and Ms. April Ingram of Boulton, Cummings, Conners & Berry, PLC, 414 Union Street, Suite 1600, Post Office Box 198062, Nashville, Tennessee 37219. In addition, Mr. Lohn Weber, Chief Financial Officer of Kentucky Data Link, Inc. and Kentucky Data Link's parent company, Q-Comm Corporation, presented testimony and was subject to examination by the Authority's Directors. Upon Kentucky Data Link's conclusion of the proof in its case, the Authority granted Kentucky Data Link's Application based upon the following findings of fact and conclusions of law:

I. APPLICANT'S QUALIFICATIONS

1. Kentucky Data Link, Inc. is a C corporation organized under the laws of the State of Kentucky.
2. The complete street address of Kentucky Data Link's principal place of business is 611 Broadway, Paducah, Kentucky 42001. The contact phone number is (812) 464-8964 and the fax number is (812) 461-3363. Kentucky Data Link's outside counsel are Henry Walker, Esq. and April A. Ingram, Esq., 414 Union Street, Post Office Box 198062, Nashville, TN 37219.
3. The Application and supporting documentary information existing in the record indicate that Kentucky Data Link has the requisite technical and managerial ability necessary to provide telecommunications services within the State of Tennessee. Specifically, Kentucky Data Link's management and technical teams have extensive expertise in the telecommunications industry. Kentucky Data Link is currently authorized to provide intrastate telecommunications services in Kentucky and Indiana.

4. Kentucky Data Link has the necessary capital and financial capability to provide the services it proposes to offer.

5. Kentucky Data Link has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. PROPOSED SERVICES

Kentucky Data Link intends to offer intrastate telecommunications services over its own facilities in Tennessee. Kentucky Data Link will provide leased capacity along its fiber optic network to interexchange carriers, competitive access providers, cable television providers, competitive local exchange companies, and others who desire to purchase services from it.

III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY

Upon a review of the Application and the record in this matter, the Authority finds that approval of Kentucky Data Link's application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced, statewide system of telecommunications services.


IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM

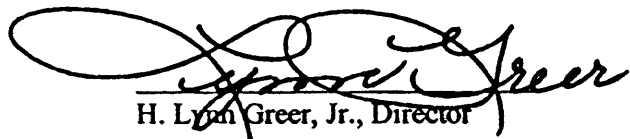
1. Kentucky Data Link has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Kentucky Data Link has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

IT IS THEREFORE ORDERED THAT:

1. Kentucky Data Link's Application as applied for is approved;
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from and after the date of this Order; and
3. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary