BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:

PETITION OF THE TENNESSEE SMALL LOCAL EXCHANGE COMPANY COALITION FOR TEMPORARY SUSPENSION OF 47 U.S.C. § 251(b) AND 251(c) PURSUANT TO 47 U.S.C. § 251(f) AND 47 U.S.C. § 253(b).	)	DOCKET NO. 99-00613

SUPPLEMENTAL REBUTTAL TESTIMONY

OF

STEVEN E. WATKINS

on behalf of

The Coalition

Ardmore Telephone Company
CenturyTel of Adamsville, Inc.
CenturyTel of Claiborne, Inc.
CenturyTel of Ooltewah-Collegedale, Inc.
Concord Telephone Exchange, Inc.
Crockett Telephone Company, Inc.
Humphreys County Telephone Company
Loretto Telephone Company, Inc.
Millington Telephone Company, Inc.
Peoples Telephone Company, Inc.
Tellico Telephone Company, Inc.
Tennessee Telephone Company
United Telephone Company
West Tennessee Telephone Company, Inc.

"Tennessee Small Local Exchange Company Coalition"

October 24, 2000

Q: PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A: My name is Steven E. Watkins. My business address is 2120 L Street, N.W., Suite 520, Washington, D.C., 20037.

Q: DID YOU PREVIOUSLY PROVIDE TESTIMONY IN THIS PROCEEDING ?

A: Yes. On behalf of the Tennessee Small Local Exchange Company Coalition (to be referred to as the "Coalition"), I submitted direct written testimony to the Tennessee Regulatory Authority ("TRA") on February 22, 2000 (to be referred to as "Watkins Direct"), rebuttal written testimony on April 6, 2000 (to be referred to as "Watkins Rebuttal"), and supplemental written testimony on September 19, 2000 (to be referred to as "Watkins Supplemental").

Q: WHAT IS THE PURPOSE OF THIS SUPPLEMENTAL REBUTTAL TESTIMONY ?

A. I will respond to the supplemental testimony submitted by Don J. Wood on behalf of the Southeastern Competitive Carriers Association (to be referred to as "Wood Supplemental"). Witness Wood's supplemental testimony repeats many of his previous generalities, misinterpretations, and errors. His supplemental testimony neglects to address my previous criticisms of his testimony. As before, his testimony relies on seductive, but improperly narrow, competitive slogans which neglect the full array of public interest, universal service, and rural consumer protections explicitly addressed by Congress in the Act. Accordingly, my testimony herein will respond to a series of statements that Witness Wood sets forth that, if not corrected, could lead the TRA to counterproductive and improper policy conclusions.

Q: IS THE PROMOTION OF MORE COMPETITORS AS CITED BY WITNESS WOOD ON PAGES 1-2 OF HIS SUPPLEMENTAL TESTIMONY THE SOLE PURPOSE OF THE ACT ?

A: No. The problem with Witness Wood's testimony throughout this proceeding is that it leaves the false impression that the promotion of new competitors is the sole or supreme objective of the Act. Of course, Witness Wood wants to promote new competitors by imposing unnecessary and burdensome interconnection requirements on smaller, incumbent rural telephone companies.

As I have previously testified, Congress clearly set forth a set of objectives which must be viewed in their entirety. In addition to the promotion of a more competitive telecommunications market, Congress also recognized other important objectives including, among others, Universal Service, promotion of advanced services, and rates in rural areas that are reasonable and comparable to urban rates and recognized that these objectives require State commissions to manage implementation of specific interconnection requirements for territories served by rural and small carriers. Witness Wood would have us believe that all telecommunications public interest objectives are served solely by promoting more competitors. Unfettered competitive markets do not serve all public interest objectives. Regardless, this proceeding is not examining the

capabilities or inabilities of competitive markets. Instead, this proceeding is examining whether the small, rural companies and their rural customers should be subjected to onerous and burdensome interconnection conditions, and whether the full set of public interest and universal service objectives would be served by suspending application of some of these requirements.

Congress understood the interplay among several potentially conflicting goals and clearly addressed the risks of the interrelated policies. *See, e.g.*, Watkins Direct at 12-18. Witness Wood has still not addressed the obvious conclusion. If Congress has intended to rely solely on competition or the promotion of new entrants by burdening smaller incumbents with onerous interconnection requirements, then Congress would not have adopted: (1) a lengthy Section 254 addressing Universal Service goals; (2) specific provisions that address smaller incumbent carriers, the rural areas they serve, and their rural customers; and (3) provisions which invite States to use their authority to condition competition in a manner that will maximize benefits for all users. *See* Watkins Rebuttal at 5.

Q: IN YOUR REBUTTAL TESTIMONY AT PAGES 10-12, YOU EXPLAINED THAT WITNESS WOOD HAS A FUNDAMENTAL MISUNDERSTANDING ABOUT THE OPERATION OF SECTION 251 OF THE ACT. HAS WITNESS WOOD CORRECTED HIS ANALYSIS ?

A: No. Witness Wood repeats the flawed analysis and does not address the errors I pointed out previously. Whether purposeful or not, Witness Wood again misuses the word "exemption." Wood Supplemental at 2-3. The Coalition members seek only <u>suspension</u> of <u>some</u> of the interconnection requirements that would be burdensome and counter-productive to rural users. Witness Wood once again incorrectly characterizes the operation of the Act as allowing rural telephone companies to seek exemption. *Id.* at 3. There are no such provisions in Section 251(f)(2) that would allow the Coalition members to seek an "exemption from competition." Watkins Rebuttal at 10.

Q: HAS WITNESS WOOD'S IMPROPER USE OF THE WORD EXEMPTION CONFUSED THE RECORD IN THIS PROCEEDING ?

A: Yes. His continued and repeated use of the word "exemption" has the effect of leading the reader to the incorrect assumption that the Coalition members are seeking in this proceeding an exemption from competitive entry in their service territory. Section 251(f)(2) of the Act does not provide for such relief. For example, he confuses the Section 251(f)(2) request for suspension by stating incorrectly that the TRA must decide whether "competitive entry is going to be permitted or prevented." Wood Supplemental at 5. That is simply wrong. Witness Wood fails to understand that suspension of <u>some</u> of the interconnection requirements does not address whether a new entrant carrier can become a competitor in any area in which it seeks to compete. Watkins Direct at 6-7. Competitive entry is not precluded under non-suspended interconnection opportunities. His testimony incorrectly confuses "competitive entry" by new entrants with the <u>entirely separate and independent</u> issue of what specific interconnection provisions should be required of smaller, rural telephone companies under competitive conditions.

Q: WITNESS WOOD STATES ON PAGE 3 THAT THE REQUIREMENTS OF "EXEMPTION" ARE NOT IMPACTED BY THE EIGHTH CIRCUIT COURT'S JULY 18, 2000 DECISION. DO YOU AGREE ?

A: His testimony is wrong with respect to the concept of "exemptions." Therefore, any apparent conclusion of Witness Wood with respect to the impact of the Eighth Circuit decision cannot make logical sense.

Q: ON PAGE 3, WITNESS WOOD EXPLAINS HIS VIEW OF THE FEDERAL COMMUNICATIONS COMMISSION RULES THAT WERE ADOPTED TO ADDRESS THE SECTION 251(f)(2) PROVISIONS OF THE ACT. DO YOU HAVE ANY COMMENT ?

A: Yes. First, he confuses "exemption" again. Exemption applies with respect to Section 251(f)(1) of the Act; this Coalition request is pursuant to Section 251(f)(2) of the Act. In neither case can the Coalition members request exemption.

I do not dispute the rule language he recites by rote. However, his answer fails to note that the Court found that the FCC's rule, which had apparently interpreted narrowly the statutory condition of "undue economic harm" as "burdens beyond those typically associated with efficient competitive entry," improperly weakened the broad protection that Congress intended for small and rural carriers and their rural customers. The FCC's interpretation of the conditions is only one among many other potential economic burdens which State commissions should consider in reviewing suspension requests.

His testimony also fails to acknowledge that the Court rejected rules which could have limited the examination of the public interest with respect to a suspension request to the narrow set of criteria set forth in Section 51.405. Beyond the criteria offered by Witness Wood, a State commission will consider potential adverse economic impact on users of the requesting LECs (47 U.S.C. §251(f)(2)(A)(i)); technical infeasibility (47 U.S.C. § 251(f)(2)(A)(iii)); and consistency with the public interest, convenience, and necessity such as universal service preservation and promotion of advanced services (47 U.S.C. § 251(f)(2)(B)).

Q: HOW IS WITNESS WOOD'S ANALYSIS OF FCC RULES INCONSISTENT WITH THE FCC'S OWN ANALYSIS ?

A: The Eighth Circuit Court explained that the FCC had concluded, in responding to the appeal requests before the Court, that the FCC had never intended for its rule to limit consideration of suspension requests to the narrow criteria of the Section 51.405 rule. Specifically, the decision states that it is the FCC's position that "it was not the FCC's intent, nor was it within the FCC's power, to eliminate any statutory requirements." *See* Eighth Circuit Decision, Section II. e. 1 (p. 26).

Q: WITNESS WOOD ON PAGES 3-4 SUGGESTS THAT THE FCC RULES HAVE BEEN IMPACTED "ONLY TO A LIMITED DEGREE" BY THE COURT'S DECISION DO YOU AGREE ?

A: No. Witness Wood once again attempts to leave the record confused. On page 4 of his Supplemental Testimony, he inaccurately characterizes the changes resulting from the Court's decision as "slight." The Eighth Circuit, as stated above, concluded that the full scope of economic harm beyond the FCC's narrow interpretation should be considered in suspension request proceedings. It would be an error for the TRA to focus solely on the burden beyond that typically associated with competitive entry.

Q: ARE THERE OTHER STATEMENTS CONTAINED IN WITNESS WOOD'S SUPPLEMENTAL TESTIMONY THAT LEAVE THE RECORD CONFUSED ?

A: Yes. As I have explained above, the Court confirmed that the potential adverse economic impact on users of the requesting LECs (§251(f)(2)(A)(i)) and technical infeasibility (47 U.S.C. § 251(f)(2)(A)(iii)) are relevant considerations in addition to the potential undue economic burdens on smaller telephone companies (§251(f)(2)(A)(ii)). The existence of any one of these conditions is sufficient in the context of a Section 251(f)(2) request to conclude that a suspension is necessary. However, Witness Wood's statements suggest misleadingly to the reader that "all three criteria must be applied." Wood Supplemental at 4, n. 1. The Act clearly contains the conjunction "or" with respect to the three Section 251(f)(2)(A) conditions. As a matter of English language construction and simple logic, the Act explicitly states that a State commission shall grant a suspension request if it is necessary to avoid any one of the three potentially adverse conditions, provided that the action is consistent with the public interest, convenience and necessity.

Q: WITNESS WOOD AT PAGE 4 SUGGESTS THAT THE FCC'S INITIAL INTERPRETATION OF UNDUE ECONOMIC HARM REMAINS A REASONABLE INTERPRETATION. DO YOU HAVE ANY COMMENT ?

A: The "burden beyond that typically encountered by efficient competitive entry" is still one consideration among many other potential economic burdens, adverse effects on users, and technical feasibility. The Coalition need only show that the TRA should grant the suspension request because it is necessary to avoid any one economic burden or potential adverse effect already discussed above. Moreover, with respect to this specific undue economic harm condition, the "beyond the economic burden typically associated with efficient competitive entry" standard is only one possible type of economic harm among many to be considered.

Q: WHY WOULD WITNESS WOOD INCORRECTLY PROMOTE THIS NARROW CRITERION AS THE PREFERRED INTERPRETATION ?

A: Apparently, Witness Wood believes that the "beyond the economic burden typically associated with efficient competitive entry" criterion is a high standard that the Coalition may have difficulty satisfying. However, his analysis is flawed.

Witness Wood attempts to suggest that the Coalition's arguments are based on avoiding any impact, whatsoever, that may result from competitive entry into a service territory previously served by a monopoly provider. Wood Supplemental at 4. This is wrong. Small incumbents are subjected to regulation that does not apply to new entrants. If

interconnection requirements were to further burden the small incumbents, the impact of any competitive entry on the incumbents clearly cannot be compared to that which would be encountered under typical, efficient competitive market. Watkins Direct at 26-28. There is nothing typical or efficient about these potential burdens and disparate treatment.

Regardless, this burden is only one condition to consider. My previous testimony already addressed the other public interest and potential adverse impacts beyond the undue economic harm criterion. I respectfully recommended a framework, consistent with the statute and the Eighth Circuit decision, for consideration of the relevant, potential adverse effects of specific interconnection requirements. Watkins Direct at 12-13. In my supplemental testimony, I summarized and cited the discussion of the full set of economic burdens and other potential adverse effects that must be avoided by suspending some of the interconnection requirements. Watkins Supplemental at 2-4.

Q: WOULD THE ESTABLISHMENT OF AN UNBUNDLED NETWORK ELEMENT PRICE FOR THE COALITION MEMBERS REMEDY THE POTENTIAL FOR HARM AS WITNESS WOOD SUGGESTS AT PAGE 6 OF HIS SUPPLEMENTAL TESTIMONY ?

A: No. His unbundled network element ("UNE") price suggestion would not address all of the adverse effects that would arise under selective market entry fostered by burdensome interconnection requirements.

As a preliminary point, apart from the evaluation of adverse effects, if a new entrant uses the incumbent's UNEs, the customers are not being served by "competitive alternatives" as Witness Wood suggests. Wood Supplemental at 6. Instead, the customers are still served by the same incumbent network.

Under any analysis or conditions, it is obviously and fundamentally an undue economic burden to the incumbent in an otherwise competitive market if only the incumbent is required to make its network available to all other competitors. No competitive market imposes such requirements on one participant. Moreover, new entrants do not require UNEs to compete.

Regardless, higher prices for UNEs would not account for all other adverse impacts that rural carriers and customers would endure without suspension of the burdensome requirements. A form of selective market entry that the availability of UNEs would allow would advantage only some providers and customers to the detriment of the incumbent and its remaining customers. *See* Watkins Direct at 15-16. The potential for exploitation by the new entrant under some interconnection requirements is an adverse impact not typically associated with efficient competitive markets. *Id.* at 16. Cream-skimming will lead to the adverse impact of requiring the rural incumbents like the Coalition members to increase rates or to forego further investment to what would become a shrinking base of less lucrative customers. Watkins Direct at 7-10 and 17-18. Moreover, as my initial testimony demonstrated, the demographics of the rural areas further heighten the potential for adverse effects. Watkins Direct at 10-12 and 18.

Q: WITNESS WOOD SUGGESTS AT PAGE 6 THAT THE COALITION HAS NOT MADE THE NECESSARY SHOWING. DO YOU HAVE A RESPONSE ?

A: Yes. Witness Wood's claim that the Coalition has not made a specific demonstration is only an argument of convenience because all of the potential adverse conditions set forth in Section 251(f)(2) of the Act describe harm which should be avoided and are necessarily in the future. His testimony is an attempt to suggest a demonstration that is tantamount to an impossibility. Watkins Rebuttal at 12-14. The Coalition has set forth potential consequences because that is all that logically can be demonstrated if we are to avoid the harm for which the suspension provisions are designed to address. I have previously explained a reasonable basis for the evaluation of what are obviously potential effects that are substantially likely to occur if the suspension request is not granted. Watkins Direct at 12-13; Watkins Rebuttal at 12-14.

I have previously set forth the basis for the Coalition's basic conclusions. The historical conditions under which the Coalition members operate are a matter of fact, and the regulatory framework that applies to the Coalition members is a matter of public record. Watkins Direct at 7-9. I have provided data which demonstrates the distinct operating characteristics of the Coalition members. *Id.* at 10-12. The conditions under which the new entrants operate are also known. In fact, I believe that the new entrants that have intervened in this proceeding have stipulated that selective market entry by new competitors is to be expected. I have explained the dynamics of network cost recovery, rate averaging, the effects of selective market exploitation of the existing cost recovery plan, and the adverse effect on rates and future investments that promotion of competition through the imposition of some of the most burdensome interconnection requirements would cause. *See, generally, id.* at 13-22. Acceptance of these outcomes as likely, if not virtually certain, requires no more than a fundamental understanding of the telecommunications industry, the incumbents, the interests of selective market entrants, and the dynamics among these participants. Witness Wood still has not disputed these potential scenarios or explained why any of the potential outcomes are unlikely.

The TRA will, therefore, be asked to apply its authority to evaluate these likely, potential effects and to condition competitive entry by suspending those interconnection requirements as to the Coalition members that would likely lead to adverse results. There is no bright line test to evaluate the potential adverse effects. If there were, Congress would have specified the criteria in the Act. Congress did not intend for the harm to occur first so that an absolute demonstration can be made. Instead, Congress wisely deferred to State commissions such as the TRA to use its policy making judgement to evaluate suspension requests.

Q: DO YOU HAVE ANY OTHER COMMENTS FOR THE RECORD ?

A: This rebuttal testimony is only necessary to address Witness Wood's testimony in the latest round that could have potentially left the record clouded. I have attempted not to burden the record any more than is necessary to address Witness Wood's testimony. This testimony should be considered supplemental to my direct testimony which sets forth a more complete discussion of Universal Service objectives and effects, public interest factors, and the burdensome effects of some interconnection requirements on small carrier and rural customers for which suspension is warranted.

Q: DOES THIS CONCLUDE YOUR SUPPLEMENTAL REBUTTAL TESTIMONY ?

A: Yes.

DISTRICT OF COLUMBIA, ss:

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified in the District of Columbia, personally came and appeared Steven E. Watkins, who, being by me first duly sworn deposed and said that;

He is appearing as a witness on behalf of the Tennessee Small Local Exchange Company Coalition before the Tennessee Regulatory Authority and if present before the Authority and duly sworn, his rebuttal testimony would be as set forth in the pre-filed supplemental testimony dated October 24, 2000, and filed in Docket No. 99-00613.

This 23rd day of October, 2000.

Steven E. Watkins

Sworn to and subscribed before me this 23rd day of October, 2000.

Notary Public, D.C.

My Commission Expires:

CHANG HO CHOI, NOTARY PUBLIC
DISTRICT OF COLUMBIA
COMMISSION EXPIRES: 6/14/2004

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was served on the following counsel of record, via the method checked, on October 24th, 2000:

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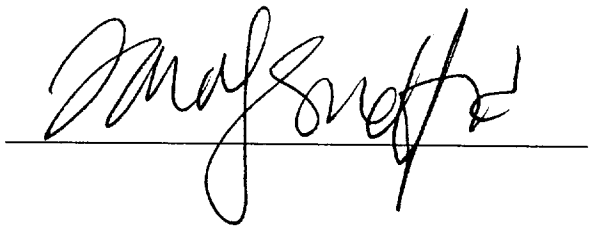

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