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September 29, 1999

VIA HAND DELIVERY

Mr. David Waddell
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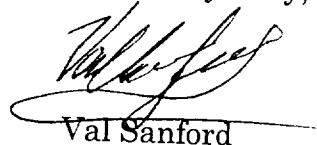
Re: *Petition of the Tennessee Small Local Exchange Company Coalition
For Temporary Suspension of 47 U.S.C. §251(b) and 251(c) Pursuant To
47 U.S.C. §(f)(2) and 47 U.S.C. §253(b)
Docket No. 99-00613*

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of AT&T Communications of the South Central States, Inc.'s Comments in the above case. Also enclosed are the original and thirteen copies of AT&T's Petition for Intervention in this same matter and a check in the amount of \$25.00 for the filing fee.

Copies of both filings have been served to all persons shown on the Certificate of Service list as filed with the Petition.

Yours very truly,


Val Sanford

VS/ghc

Enclosures

cc: James P. Lamoureux, Esq.
Garry Sharp

FILE

paid
\$25.00
ck# 037860

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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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. §(f)(2) and 47 U.S.C. §253(b)*

Docket No. 99-00613

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

Pursuant to the Notice served in this matter, AT&T Communications of the South Central States, Inc. ("AT&T") files these comments, pointing out that the petition of the Coalition of Small LECs fails to state a valid basis for the relief sought, and suggesting a procedure to be followed in this matter.

I. THE COALITION PETITION DOES NOT COMPLY WITH 47 U.S.C. 251(f)(2) OR THE FCC's RULES AND IS CONTRARY TO THE INTERESTS OF TENNESSEE CONSUMERS.

The Coalition Petition presents broad, general, conclusory arguments, but offers no company specific facts. Congress, however, clearly intended that suspension and modification for rural carriers under §251(f)(2) would be on a carrier specific, case-by-case basis. "A local exchange carrier" may petition. The criteria for granting such petitions requires proof of facts demonstrating that such suspension or modification:

- (A) is necessary –
 - (i) to avoid a significant adverse economic impact on users of telecommunications services generally;
 - (ii) to avoid imposing a requirement that is unduly economically burdensome; or
 - (iii) to avoid imposing a requirement that is technically infeasible; and
- (B) is consistent with the public interest, convenience, and necessity.

In its Local Competition Order, the FCC discussed the proper interpretation of 252(f)(2), at ¶1262:

We believe that Congress intended exemption, suspension, or modification of the of the section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension, or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry. State commissions will need to decide on a case-by-case basis whether such a showing has been made.

In order to implement these decision, the FCC adopted a Rule that suspension or modification determinations must be made "on a case-by-case basis," 47 C.F.R. §51.401.

The FCC further adopted Rule 51.405(d), which provides:

In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

The Eighth Circuit in Iowa Utilities Bd. v. FCC, 120 F.3d 753, 802-03 (8th Cir. 1997) vacated Rule 51.405 on jurisdictional grounds. The United States Supreme Court, however, expressly reversed the Eighth Circuit as to the FCC's jurisdiction to adopt Rule 51.405; AT&T Corp. v. Iowa Utilities Bd., ___ U.S. ___, 119 S.Ct. 721, 733, 142 L.Ed.2d 835 (1999).

The TRA in entertaining petitions under 47 U.S.C. §251(f)(2) is bound to follow the FCC's rules.

The coalition petition neither contains, nor refers to, any evidence, much less

evidence showing that application of §§251(b) or (c) would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.

Indeed, it is clear from the arguments advanced in the Coalition Petition that the objective of the LECs filing it is to prevent their local exchange customers from enjoying the benefits competition will bring. Congress has adopted a policy favoring competition in all telecommunications markets, on the basis that competition is in the best interests of consumers of telecommunications services. Any modification or suspension of the means to carry out that policy must be based on evidence showing an undue economic burden beyond that typically associated with efficient competition. Nothing in the Federal Act or the FCC rules authorizes state commissions to delay the benefits of competition until universal service proceedings are finally concluded.

In considering the issues raised in the Coalition Petition, their full context should be considered, including the manner and extent by which certain of the small LECs are using their monopoly powers over local exchange markets in an effort to control competitive markets. For example, the January 1999 Directory distributed for the LaVergne and Mt. Juliet exchanges does not mention Tennessee Telephone Co., but is in the name of TDS TELECOM, and advertises “TDS TELECOM” – your connection to the world of information,” including “Long Distance Calling Plans” and other competitive services. The “Century Tel” directories emphasize “One-stop shopping for integrated communications service . . . making life simpler for our customers”; and “Century Tel is the source for all your communications needs offering local exchange, wireless, long distance, Internet access, and an expanding array of new services to rural areas and smaller cities throughout 21 states.” United Telephone Company, in its directory,

likewise, emphasizes “A total service network,” including advertisements for UTC Long Distance. Ardmore Telephone Company in its September 1999-2000 Directory advertises the introduction of “Ardmore Communications/Long Distance” with the slogan “Bringing Long Distance Back Home!”

II. THE COALITION PETITION IS AN OBVIOUS ATTEMPT TO CIRCUMVENT THE DECISION OF THE FCC IN THE HYPERION CASE.

The Coalition Petition itself recites the Hyperion decision, ¶¶5 and 6, as the basis for the granting of the relief it seeks. The universal service arguments advanced, and rejected by the FCC, in the Hyperion case under 47 U.S.C. §253(b), have even less weight under 47 U.S.C. §251(f)(2). Certainly, in the face of the FCC’s decision, and the pendency of a motion to reconsider that decision, it is not proper for the TRA to base its decision on this petition on arguments advanced and rejected in the Hyperion case.

III. THE FEDERAL STATUTES AND THE FCC RULES REQUIRE AN EVIDENTIARY HEARING FOR STATE COMMISSION DETERMINATIONS UNDER §251(f)(2); AND, THUS, UNDER THE UNIFORM ADMINISTRATIVE PROCEDURES ACT, A CONTESTED CASE PROCEEDING IS NECESSARY FOR THE DISPOSITION OF THE COALITION PETITION.


The Coalition Petition is not based on the governing standard and the procedures required by the FCC rules. Under these circumstances, an order dismissing the petition would be appropriate, on the ground that it fails to state a valid basis for the granting of the relief sought. However, in the interest of an expeditious resolution of the issues on the merits, the TRA may convene a contested case, allow intervention, designate a hearing officer and convene a pre-hearing conference for the purpose of defining issues and establishing appropriate procedures. Common legal issues could then be determined in an initial phase of the proceeding. Any determination, however, as to the suspension

or modification under §251(f)(2) must be on a carrier-by-carrier, case-by-case basis, grounded on evidence in the record.

There are significant differences in the circumstances of the various carriers comprising the Coalition – in the characteristics of their service areas, the customers they serve, the services they provide, their financial resources, their earnings and the nature and extent of the competition they might face. In order to justify granting a suspension or modification under §251(f)(2) each such carrier must make out its own case. Under Rule 51.405(d) each such carrier “must offer evidence that the application of §251(b) or §251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry.”

Unless and until such evidence is presented, there is no basis for granting any carrier the relief sought in the Coalition Petition.

Simultaneously with the filing of these comments, AT&T is filing a Petition for Intervention in this proceeding.



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CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that on September 29, 1999, a copy of the foregoing Comments was served on the following persons, United States Mail, Postage pre-paid addressed as follows, such persons being the service list shown on the Certificate of Service filed with the Petition.


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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. §(f)(2) and 47 U.S.C. §253(b)*

Docket No. 99-00613

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EXECUTIVE SECRETARY

PETITION FOR INTERVENTION OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC

AT&T Communications of the South Central States, Inc., pursuant to T. C. A. §4-5-310, submits this petition for intervention in this matter, to participate as its interest may appear, and in support of this petition states that:

1. AT&T Communications of the South Central States, Inc. ("AT&T") is a Delaware corporation, authorized to do business in Tennessee, holding certificates of public convenience and necessity to operate in Tennessee intrastate commerce as both an interexchange carrier and as a competing telecommunications service provider.

2. The petition filed by The Tennessee Small Local Exchange Company Coalition ("Coalition Petition") raises significant issues as to the development of competition in local exchange markets in Tennessee; and the legal rights, duties and other legal interests of AT&T may be determined in this proceeding.

3. Effective June 6, 1995, the Tennessee General Assembly adopted a policy "to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets."

4. Effective February 6, 1996, Congress also adopted a policy to promote competition in the provision of telecommunications services.

5. The companies filing the Coalition Petition, thus, have had over three years to prepare for the presence of competition in their respective service areas. However, their petition gives no evidence of such preparation. Instead, the coalition members seek to delay the implementation of meaningful competition in their service areas.

6. As a subscriber to the access services of these companies and as an authorized competing telecommunications services provider, AT&T has an interest, consistent with the general public interest, in the development of competition in the service areas of these companies.

7. The statute, 47 U.S.C. §251(f)(2), authorizing state commissions to suspend or modify the application of the requirements of subsections (b) or (c) of 47 U.S.C. §251 expressly provides that a petition for that purpose may be filed by “a local exchange carrier.” The FCC Rule, 47 C.F.R. §51.401 expressly provides that state commission determinations pursuant to §251(f) “shall be made on a case-by-case basis.” Yet, the Coalition Petition seeks general relief applicable to all such local exchange carriers, rather than relief tailored to the specific circumstances of each such carrier.

8. There are significant differences in the circumstances of the various carriers comprising the coalition – in the characteristics of their service areas, the customers they serve, the services they provide, their financial resources, their earnings and the nature and extent of the competition they might face. Therefore, rather than the sort of abstract, general relief sought in the Coalition Petition, this proceeding must consider suspension or modification of the applicable statutory requirements on a case-by-case basis.

9. FCC Rule, 47 C.F.R. §51.405(b) and (d) provide:

(b) A LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide must prove to the state commission, pursuant to section 251(f)(2) of the Act, that it is entitled to a suspension or modification of the application of a requirement or requirements of section 251(b) or 251(c) of the Act.

(d) In order to justify a suspension or modification under section 251(f)(2) of the Act, a LEC must offer evidence that the application of section 251(b) or section 251(c) of the Act would be likely to cause undue economic burden beyond the economic burden that is typically associated with efficient competitive entry. (Emphasis added).

Therefore, an evidentiary hearing as to each member of the coalition must be held, at which each such company shall have the burden of proving by competent evidence, not merely by conclusory argument, that each such company is entitled to the relief it seeks.

10. Since an evidentiary hearing is required, this proceeding is a contested case within the meaning of the Uniform Administrative Procedures Act, and should proceed in the same manner as other contested cases.

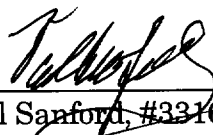
11. The interests of justice and the orderly and prompt conduct of the proceedings in the manner required by law will not be impaired by allowing the intervention of AT&T, as its interest may appear.

WHEREFORE, the premises considered, AT&T prays that:

1. Its petition for intervention be granted, and it be allowed to participate in this proceeding as its interest may appear, and to receive copies of all filings, notices, and orders.

2. It have such other, further and general relief as the justice of its cause may entitle it to receive.

This 29th day of September, 1999.



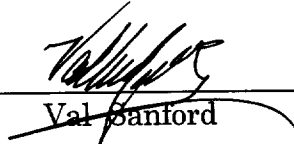
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CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that I have on this 29th day of September, 1999, served a copy of the foregoing Petition for intervention of AT&T Communications of the South Central States, Inc. on the following persons, United States Mail, Postage pre-paid addressed as follows, such persons being the service list shown on the Certificate of Service filed with the Petition.



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