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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 93-36

93-36

In the Matter of)
Tariff Filing Requirements)
for Nondominant Common Carriers)
_____)

OPPOSITION OF TELOCATOR

Telocator, the Personal Communications Industry Association, hereby opposes the Application for Stay of Order Pending Appellate Review filed by American Telephone and Telegraph Company ("AT&T") on September 7, 1993. Telocator submits that AT&T has failed to carry its heavy burden of demonstrating its entitlement to the extraordinary relief it seeks. Rather, the record before the Commission demonstrates that issuance of a stay in these circumstances would irreparably injure numerous mobile service providers who cannot reasonably file tariffs with the degree of specificity desired by AT&T. Moreover, the public interest in the competitive provision of mobile services would be harmed by imposition of such a tariffing requirement. Accordingly, AT&T's Application for Stay should be denied.

AT&T argues that a stay is warranted because it has demonstrated that (1) it is likely to prevail on the merits, (2) it will suffer irreparable harm, (3) no substantial harm will befall others, and (4) the public interest will be

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served by a stay.¹ Telocator has already rebutted AT&T's showing on the merits in its Reply Comments in this proceeding.² Moreover, AT&T's claims of injury to itself are obviously overstated and belied by its continued dominant position in the interexchange market notwithstanding a decade of permissive detariffing. Telocator will, therefore, focus its attention here on the final two prongs of the Virginia Petroleum Jobbers test.

First, as regards to AT&T's contention that issuance of the stay would not substantially harm other parties interested in the proceeding, the record in this docket is replete with showings of the unwarranted burdens that would be placed on mobile service providers -- many of which would qualify as small businesses and virtually all of which are smaller than AT&T -- were the relief AT&T seeks to be granted.³ Because these companies have never before been

¹ See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958).

² See Reply Comments of Telocator, filed April 19, 1993. The Commission agreed with Telocator's assessment of the governing law. Memorandum Opinion and Order, FCC 93-401 (released Aug. 18, 1993).

³ Strictly speaking, a stay of the Commission's Order in this docket would simply return the industry to its prior condition, i.e., operation under the interim waivers previously granted by the Commission. See Petition for Waiver of Part 61 of the Commission's Rules, 8 FCC Rcd 1412 (1993). Thus, AT&T is effectively seeking affirmative relief -- the imposition of a detailed tariffing requirement -- rather than merely a stay of the agency's decision.

required to file tariffs, the relative cost to them of implementing such a detailed tariffing requirement would indeed be substantial and would result in a significant drain on their already limited resources, which would otherwise be devoted to the provision of services to the public. Moreover, those wasted resources could never be recovered were the Commission's Order ultimately to be upheld. Consequently, the injury to these entities and to the public, which AT&T never addresses in its pleading, would be both substantial and irreparable.

Second, with respect to a public interest determination, the record also reveals that the imposition of tariffing regulation as urged by AT&T would undermine the vigorously competitive mobile services marketplace. "Such regulations would raise barriers to entry, impair [mobile service providers'] ability to respond to the . . . market and new customer demands, discourage service innovation, and inhibit price competition."⁴ It follows that grant of the stay will harm the public interest in promoting competition in the mobile services industry.

⁴ Comments of Telocator at 5 (filed March 29, 1993) (footnoted omitted).

For the foregoing reasons, Telocator urges the Commission to deny AT&T's Application for Stay of the Memorandum Opinion and Order in this proceeding.

Respectfully submitted,

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September 14, 1993

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September, 1993, I caused copies of the foregoing "Opposition of Telocator" to be mailed via first-class postage prepaid mail to the following:

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