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

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In the Matter of	)	
	)	
AMERICAN TELEPHONE AND TELEGRAPH COMPANY	)	
	)	
Petition for the Establishment of Additional Standards to Govern Study Area Boundary Changes in Connection with the Transfer of Service Territories Between or Among Local Exchange Carriers	)	RM - 8334

OPPOSITION

Cathey, Hutton and Associates, Inc. (CHA), pursuant to the Commission's Public Notice, DA 93-1128, released September 20, 1992, hereby opposes the Petition for Rulemaking (Petition) filed by the American Telephone and Telegraph Company (AT&T) on September 3, 1993, in the above-captioned matter.

In its Petition, AT&T requests that specific criteria be prescribed for evaluating study area waiver requests where there has been a sale or other transfer of telephone exchanges from one local exchange carrier (LEC) to another. CHA is a telecommunications management consulting firm providing services to the independent LEC industry, including services related to the sale and acquisition of telephone properties and the preparation of supporting study area waiver requests. As CHA discusses below, AT&T's request is based on unsubstantiated assertions and is not needed for the Commission to fulfill its public interest objectives. Accordingly, AT&T's Petition should be denied.

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I. DISCUSSION

AT&T's argument that the Commission should adopt rules requiring specific showings in support of study area waiver requests is predicated, almost entirely, on AT&T's apparent fear that unless Universal Service Fund growth is curtailed, an increase in transactions involving the sale of telephone exchanges could result in an increase of as much as $400 million in USF obligations. (Petition, pp. 7-8) AT&T provides no support whatsoever for its bold assertion other than to say that it is an "AT&T estimate." (Id., p. 7) This is wholly inadequate support for undertaking a proceeding looking for permanent changes in the Commission's rules.

Further, while impact on the USF is certainly a relevant consideration in determining whether to grant a study area waiver request,[1] CHA submits that contrary to what is implied by AT&T's Petition, the mere fact that a transaction could result in an increase in the USF should not be a reason to deny a waiver request. If an increase in the USF is necessary to ensure that rural telephone subscribers are served with the same up-to-date technology available to urban customers, then the increase is

[1] The Commission has stated that one of its primary concerns in evaluating study area boundary change petitions is "that the change have no adverse impact on the [USF] program." US West Communications, Inc. and Emery County Farmers Union Telephone Association, 7 FCC Rcd 6076 (1992). Of course, the fact that the USF may increase as a result of a transaction does not necessarily mean that there will be adverse impact on the program.

justified.[2] The Commission has made clear that it "is committed to assuring the availability of high quality, innovative communications services, and to the development of the telecommunications infrastructure needed to provide these services."[3]

AT&T's request for a rulemaking is not only unsubstantiated, it is also unnecessary. The Commission can, and often does, ask for whatever information it deems necessary to process a request for a waiver of its rules. CHA itself has assisted small LEC purchasers of telephone exchanges in preparing detailed information in support of study area waiver requests. Indeed, given the fact that grant or denial of a waiver of an agency's rules is normally within the agency's discretion,[4] a party seeking waiver would be ill-advised to ignore the Commission's request for additional information, whether or not that information is specified by the Commission's rules.

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[2] See US West Communications, Inc. and Wiggins Telephone Association, DA 93-887, released August 10, 1993 (Acting Chief, Common Carrier Bureau) where despite a finding that a $10,000 per year increase in USF was not de minimis in a transaction involving 87 lines, a study area waiver was granted where the purchaser was undertaking investment to provide the customers served by the acquired property "with modern technology and capabilities."

[3] Policy and Rules Concerning Rates of Dominant Carriers, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6827 (1990).

[4] See, e.g., Health and Medicine Policy Research Group v. FCC, 807 F.2d 1038, 1041 (D.C. Cir. 1986).

Finally, AT&T's Petition has been rendered largely moot by the Commission's Public Notice, DA 93-1093, released September 7, 1993, in which the Common Carrier Bureau provided "suggestions" in the form of rather detailed information requirements as to what should accompany a request for a study area waiver. While CHA does not agree that all of the information specified in the Public Notice is useful in processing study area waivers, that information is more focused and relevant to the waiver process than the approach advocated by AT&T. Moreover, because the Public Notice contains only "suggestions" and not hard-and-fast rule requirements, the Commission will have far greater leeway in modifying its information needs to meet any unique circumstances that might be presented in a particular case.

II. CONCLUSION

For all of the foregoing reasons, the Commission should reject AT&T's Petition for Rulemaking.

Respectfully submitted,

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October 20, 1993

CERTIFICATE OF SERVICE

I, Marcella C. Jost, do hereby certify that copies of the foregoing Opposition of Cathey, Hutton & Associates, Inc. were sent via first class mail, postage paid, to the following on this 20th day of October, 1993:

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