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December 18, 2015

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Tri-County Telephone Association, Inc., Petition for Waiver of Accounting Rules, WC Docket No. 08-239

Dear Ms. Dortch:

On December 14, 2015, on behalf of Tri-County Telephone Association, Inc. ("TCT"), I spoke by telephone with Pamela Arluk, Chief, Pricing Policy Division, Wireline Competition Bureau, concerning the above-captioned proceeding. I indicated that the company hoped to have a ruling in this matter before the end of the year given that the Commission is expected to soon rule on Connect America Fund II procedures for rate-of-return carriers.

TCT's request in the above-captioned proceeding includes a request to waive the requirement, contained in the *Joint Cost Order*, that investment treated as nonregulated may not be returned to regulated investment accounts without "advance Commission approval."[1] The Commission indicated that it would grant such permission if the carrier makes a "convincing showing that (1) the carrier's regulated activities require the use of plant capacity allocated to nonregulated activities, and (2) that the carrier cannot obtain the needed capacity elsewhere at lower cost."[2] and the reallocation "will be made at the depreciated baseline cost."[3]

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1 *Separation of costs of regulated telephone service from costs of nonregulated activities*, CC Docket No. 86-111, Report & Order, 2 FCC Rcd 1298, ¶ 172 (1986) ("*Joint Cost Order*"), *on reconsideration*, Order on Reconsideration, 2 FCC Rcd 6283 (1987) ("*Joint Cost Reconsideration Order*"), *on further reconsideration*, Order on Further Reconsideration, 3 FCC Rcd 6701 (1988) ("*Joint Cost Order Second Reconsideration Order*").

2 *Joint Cost Second Reconsideration Order*, ¶ 31 (citing *Joint Cost Order*, ¶ 169 n.284).

3 *Joint Cost Order*, ¶ 172.

TCT makes the required showing with respect to this waiver, which is supported by existing precedent taken on delegated authority at the Bureau level.

In the *BellSouth Waiver Order*, the Bureau granted a waiver of the *Joint Cost Order*'s prohibition on transferring investment to regulated accounts based on the above-described test.[4] In that case, BellSouth booked investment for three voice messaging systems in nonregulated accounts for services that BellSouth had provided to itself for administrative purposes. It requested that these accounting entries be adjusted, including transferring some of the investment to regulated accounts. The Bureau granted the request because the same ratepayers funded most of the nonregulated expenses (by inclusion of administrative expenses in revenue requirements) that they would fund once the investment is transferred to regulated accounts, and that the capacity was needed for provision of the regulated services. *BellSouth Waiver Order*, ¶¶ 12-14.

In the instant case, the same analysis applies. After TCT mistakenly deregulated the transmission component of broadband service, voice and broadband customers continued to pay for, and thus fund, the loop investment used to provide broadband service.[5] In 2010 when the transmission component of broadband was again offered on a permissive detariffed basis as permitted by FCC rules, largely the same voice and broadband customers continued to fund this loop investment. Because the loop investment in 2000 should not have been transferred to nonregulated accounts, if the accounting had been done correctly, regulated ratepayers would have been paying for the investment all along. Thus, like the *BellSouth* case, transfer of the investment would not have any appreciable impact on customers for regulated services.[6]

Applying the test enunciated by the Commission, there is no question that the capacity sought to be transferred is required to provide the regulated transmission

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4 *BellSouth Telecommunications, Inc. Petition for Waiver of Section 64.901(b)(4) of the Commissions Rules that Govern the Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities*, 10 FCC Rcd 583 (Com. Car. Bur., 1995) ("*BellSouth Waiver Order*").

5 The vast majority of TCT broadband customers also subscribed to voice services during the time that the broadband transmission component was deregulated (2000 through 2010, when the transmission component was again provided pursuant to regulation on a permissive detariffed basis).

6 Once the nonregulated loop investment is transferred to regulated accounts, broadband customers will continue to be able to receive the same broadband services, with no impact on the retail price because of the investment transfer.

service. The same broadband transmission component service is utilized by customers both before and after a transfer to regulated accounts. The number of broadband subscribers has steadily increased since TCT introduced the service, and TCT expects that trend to continue in the immediate future. The instant transfer is unlike the typical situation where the nonregulated service provided through the use of the nonregulated is entirely of a different type than would be offered over the transferred investment and used by ratepayers of regulated services. Because of this identity in broadband services before and after transfer, the transfer of investment would not place the risk on ratepayers of the "failure of a nonregulated activity."[7]

In addition, because the loop investment that is the subject of the instant waiver has been depreciated for a number of years, the current plant in use cannot be replaced at a lower cost.[8] Finally, the nonregulated investment would be transferred to regulated accounts based on "depreciated baseline cost." Therefore, the waiver standard set forth in the *Joint Cost Order* has clearly been met in this case, and grant of the waiver would be consistent with the *BellSouth Wavier Order*.

The impact of a grant of the requested waiver would have a negligible impact on the universal service fund ("USF"). The small increase in annual high cost USF payments identified in the Attachment to TCT's March 28, 2011 letter[9] filed in the above-referenced docket, is far below the one percent threshold that the Bureau has utilized to grant waivers on delegated authority in other contexts.[10]

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7 *Bell South Waiver Order*, ¶ 13. The Commission has noted that the policy prohibiting transfer of investment from nonregulated regulated use "is intended to insure that investment risks of nonregulated ventures are not shifted to a carrier's regulated operations." *Id.*, ¶ 2. Because the same broadband service is provided both before and after transfer to regulated accounts, this concern is not present.

8 *See* Declaration of Steven C. Harper, Chief Financial Officer of TCT, attached as Exhibit A.

9 If the waiver is granted and loop investment is allocated to regulated accounts, the amount of high cost USF payments will vary somewhat from year to year from those identified in the referenced Attachment.

10 *See, e.g., Gorham Telephone Company, Inc., and Rural Telephone Service Company, Inc.; Joint Petition for Waiver of the Definition of "Study Area" Contained in Part 36, Appendix-Glossary of the Commission's Rules; Petition for Waiver of Section 69.3(e)(11) of the Commission's Rules*, 21 FCC Rcd 11972 (Wir. Comp. Bur. 2006).

Therefore, TCT West believes that there is ample precedent that would permit the Bureau on delegated authority to grant the requested waiver to reallocate nonregulated investment to regulated accounts.[11]

Pursuant to 47 C.F.R. § 1.1206, please include this ex parte filing in the above-referenced docket.

Sincerely,

/s/ Gregory J. Vogt

Gregory J. Vogt
Counsel for Tri-County Telephone Association, Inc.

cc: Pamela Arluk

Enclosure

[11] The request for a *nunc pro tunc* waiver of the Commission's *Computer II* requirement that the transmission component of broadband service be offered on an unbundled regulated basis now appears to be moot and is therefore withdrawn.

APPENDIX A

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Tri-County Telephone Association, Inc.,	)	WC Docket No. 08-239
	)	
	)	
Petition for Waiver of Accounting Rules.	)	
	)	

DECLARATION OF STEVEN C. HARPER

I, Steven C. Harper, hereby declare the following:

1. I am the Chief Financial Officer of Tri-County Telephone Association, Inc. ("TCT"). I have responsibilities that include having detailed knowledge concerning the company's accounting and purchasing practices. I am submitting this Declaration in support of the waiver TCT has submitted in the above-captioned docket.

2. The investment that has been allocated to nonregulated account for provision of Digital Subscriber Line ('DSL") service is loop investment in Account 2232 consisting of digital loop concentrators ("DLCs") and in Account 2423 consisting of fiber and copper buried cable and wire facilities. This investment has been depreciated in accordance with GAAP accounting principles and consistent with Commission regulations. Because this investment has been depreciated over a number of years, alternative investment cannot now be acquired at a lower cost.

3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief.

Steven C. Harper, CFO

Dated: December 18, 2015