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July 10, 2007

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia, South Carolina 29201

Re: Petition for Reconsideration of Opinion No. 26354
Hearing October 9, 2003 – Filed June 25, 2007

Dear Mr. Shearouse:

Enclosed for filing please find the Petition for Reconsideration and Certificate of Service on behalf of Appellants, South Carolina Cable Television Association and Southeastern Competitive Carriers Association. The original and six copies are included along with this firm's check in the amount of $25.00 for the required filing fee. Please file-stamp the extra copy provided and return it with our courier.

Thank you for your assistance. Should you have any questions, please call.

Yours truly,

Frank R. Ellerbe, III

FRE/tch
Enclosures
cc/enc: Florence P. Belser, Esquire
F. David Butler, Esquire
Steven W. Hamm, Esquire
M. John Bowen, Jr., Esquire
Margaret M. Fox, Esquire

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SC PUBLIC SERVICE COMMISSION

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Office of Regulatory Staff, Appellant,

v.

South Carolina Public Service Commission, South Carolina Telephone Association, and Verizon South, Inc., Respondents

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2007 JUL 10 PM 12: 20
SC PUBLIC SERVICE COMMISSION

South Carolina Cable Television Association and
Southeastern Competitive Carriers Association, Appellants,

v.

South Carolina Public Service Commission,
South Carolina Telephone Association, and
Verizon South, Inc., Respondents.

Appeal from Richland County
J. Ernest Kinard,Jr., Circuit Court Judge

Opinion No. 26354
Heard October 9, 2003 – Filed June 25, 2007

PETITION FOR REHEARING

Appellants South Carolina Cable Television Association ("SCCTA") and Southeastern Competitive Carriers Association ("SECCA"), pursuant to Rule 221 SCACR, hereby petition for rehearing of the Court's opinion no. 26354 in the captioned matter. The ground for the petition is that Section II of the opinion

overlooks or misapprehends certain points relating to the argument that the South Carolina Universal Service Fund ("USF") impermissibly burdens federal universal support mechanisms in violation of Section 254(f) of the Federal Telecom Act.

The opinion addresses two federal cases cited in the brief filed by SCCTA and SECCA but fails to address two later federal cases decided after briefing and submitted to the Court pursuant to Rule 208(b)(7). In their brief SCCTA and SECCA argued that the South Carolina USF improperly assessed interstate revenues to support the intrastate fund. SCCTA and SECCA cited AT&T Communications, Inc. v. Eachus, 174 F.Supp.2d 1119 (D. Or. 2001) which held that the Oregon intrastate universal service fund violated Section 254(f) when it taxed interstate revenues to support the intrastate fund. SCCTA and SECCA also cited Texas Office of Public Counsel v. FCC, 183 F.3d 393 (5th Cir. 1999)("TOPUC"). That case held that the federal universal service fund could not tax intrastate revenues to support the interstate fund. In its opinion this Court rejected the argument advanced by SCCTA and SECCA by addressing both cases cited in the brief:

> In TOPUC, the court held that the FCC lacked jurisdiction to assess intrastate revenues because of a statutory limitation on its jurisdiction. The TOPUC case dealt only with the FCC's jurisdiction, not the states' jurisdiction, and therefore has no relevance in the present case. Relying on TOPUC, the Eachus court did, in fact, hold the assessment of interstate revenues for a state fund burdens the federal support mechanism. We believe the case was incorrectly decided.

Office of Regulatory Staff v. South Carolina Public Service Commission et al., Opinion No. 26354, p.14.

In addressing this issue the opinion fails to discuss two more recent and more persuasive opinions reported after briefs were filed in this case.[1] Those decisions are the district court decision in AT&T Corp. v. Public Utility Commission of Texas, 252 F.Supp.2d 347 (W.D. Tx. 2003) and the appellate decision of the Fifth Circuit Court of Appeals in the same case, AT&T v. Public Utility Commission of Texas, 373 F.3d 641 (5th Cir. 2004). Among the issues decided in that litigation was the identical issue which SCCTA and SECCA have raised with respect to the South Carolina USF. The Texas fund, like the South Carolina fund, assessed both interstate and intrastate revenues to support the state fund. The Fifth Circuit followed its decision in TOPUC in holding that the Federal Telecom Act prohibited a state from assessing interstate revenues to support its intrastate fund:

> Although TOPUC's holding is based upon the "equitable and nondiscriminatory" language in §254(d), §254(d) and (f) are companion sections and §254(d)'s "equitable and nondiscriminatory" limitation on the federal funding mechanism is identical to the language in §254(f) limiting the State's authority to fund universal service .... Given the symmetry of §§254(d) and (f), TOPUC dictates the result in this case. The assessment of interstate revenues *and* intrastate telecommunications revenues has the same effect as the FCC's assessment of interstate and international revenues in TOPUC.

AT&T v. Public Utility Commission of Texas, 373 F3d. at 646-647. The Fifth Circuit decision finding the Texas fund to be in violation of §254(f) is the leading case on this point. There are no contrary decisions addressing this issue.

SCCTA and SECCA urge the Court to rehear and reconsider the issue of whether the South Carolina USF can assess interstate revenues to support the

[1] These cases were submitted to the Court pursuant to Rule 208(b)(7) by letters dated October 10, 2003 and July 1, 2004.

state fund. The Fifth Circuit in TOPUC and AT&T v. Public Utility Commission of Texas has provided a clear and coherent reading of the provisions of §254: the federal fund will be funded by assessments on interstate revenues; state funds will be funded by assessments on intrastate funds. The South Carolina USF should be operated in a way that is consistent with these holdings. Accordingly, this Court should rule that the current operation of the South Carolina USF improperly burdens federal support mechanisms in violation of 47 U.S.C.§254(f).

July 10, 2007

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