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December 14, 2001

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

RE: *Petition for Arbitration of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc. and BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*

Docket No. 00-00079

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Petition of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. for Reconsideration of Initial Order.

Copies are being served on all parties of record.

Very truly yours,

Jack W. Robinson, Jr.

JWRjr/ghc

cc: Parties of record

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BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

IN RE: **Petition for Arbitration of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc., and BellSouth Telecommunications, Inc. Pursuant to the 47 U.S.C. § 252**	)	**Docket No. 00-00079** **Filed: December 14, 2001**

AT&T AND TCG PETITION FOR
RECONSIDERATION OF INITIAL ORDER

Pursuant to Rule 1220-1-2-.20 of the Tennessee Regulatory Authority's ("TRA" or "Authority") Rules and Regulations, AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively, "AT&T") respectively request the Authority to reconsider its decision concerning issues Nos. 10 and 12 of its November 29, 2001 Final Order of Arbitration Award in the above-captioned matter. In support thereof, AT&T shows the following:

BACKGROUND

1. Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the "Act"), AT&T petitioned the Authority in 1996 to arbitrate certain issues arising out of negotiations between AT&T and BellSouth Telecommunications, Inc. ("BellSouth") relating to their initial interconnection agreement ("Initial Agreement"). On January 23, 1997, the Authority issued its Second and Final Order of Arbitration Awards in Docket No. 96-01271 resolving the issues presented in that Arbitration. The parties incorporated the Authority's decision into the Initial Agreement. The term of the Initial Agreement

was three years, and it remained in effect until February 23, 2000. Pursuant to the Act and the Initial Agreement, on August 30, 1999, AT&T sent a notice of non-renewal to BellSouth and formally requested the initiation of negotiations for a new agreement. Because the parties were unable to reach agreement on all of the issues, AT&T again filed a Petition for Arbitration with the Authority on February 4, 2000. The matrix that was attached to the Petition indicated that there were forty-two "core" issues in dispute. The parties ultimately agreed to arbitrate sixteen issues that significantly impact AT&T's ability to remain a provider of telecommunications services in the Tennessee local exchange market. The arbitration hearing was held in Nashville, Tennessee on April 9-10, 2001 and the parties filed briefs on May 10, 2001. Since the arbitration hearing, the parties have agreed to consider certain issues in generic cases, agreed to further negotiate certain issues at a later date or have settled the issues. The Authority was required to issue an order regarding the remaining issues. Subsequently, the Authority issued its final Order on arbitration on November 29, 2001.[1]

ISSUE 10: SHOULD BELLSOUTH BE ALLOWED TO AGGREGATE LINES PROVIDED TO MULTIPLE LOCATIONS OF A SINGLE CUSTOMER TO RESTRICT AT&T'S ABILITY TO PURCHASE LOCAL CIRCUIT SWITCHING AT UNE RATES TO SERVE ANY OF THE LINES OF THAT CUSTOMER?

2. The Authority stated in its Final Order that BellSouth could aggregate lines provided to multiple locations of a single customer for the purpose of determining

[1] Final Order Of Arbitration Award, *In Re: Petition For Arbitration of the Interconnection Agreement Between AT&T Communications of the South Central States, Inc., TCG MidSouth, Inc., and BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. §252,* Docket No. 00-000079, issued: November 29, 2001. ("Final Order")

the appropriate pricing for local circuit switching.[2] The Authority should reconsider its decision on this issue because it is inconsistent with the development of local exchange competition in Tennessee and with a recent decision of the Florida Public Service Commission ("FPSC") in the arbitration of a similar interconnection agreement in that state. The parties were unable to reference the FPSC decisions in their post-hearing briefs because the FPSC did not issue their rulings until June 28, 2001 (the Final Order) and September 28, 2001 (Order on Reconsideration)[3].

3. If BellSouth is allowed to aggregate the lines of customers with multiple locations, it will significantly diminish, if not completely eliminate, the ability of Competitive Local Exchange Carriers ("CLECs") to compete for their business. The intent of FCC Rule 51.319 (c)(2) is to promote competition, not to create barriers to market entry. Customers that have multiple locations with one or two lines each are just the type of mass-market customers where "nascent" competition needs to be stimulated.[4] Each location is a small business enterprise catering to the local community in its area. These locations are more akin to the residential and small business mass-markets than to medium and large business customers. Thus, they should be treated on an individual basis rather than aggregated for pricing purposes.

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[2] Final Order, p. 20.

[3] *In re: Petition by AT&T Communications of the Southern States, Inc. d/b/a AT&T for arbitration of certain terms and conditions of a proposed agreement with BellSouth Telecommunications, Inc. pursuant to 47 U.S.C. Section 25,* Final Order on Arbitration, Docket No. 000731-TP, Order No. PSC-01-1402-FOF-TP, (Issued: June 28, 2001). ("FPSC's Final Order") and Order Denying Reconsideration, Correcting Final Order, and Granting Motion for Extension of Time, Docket No. 000731-TP, Order No. PSC-01-1951-FOF-TP, (issued: September 28, 2001). ("FPSC's Order on Reconsideration").

[4] See *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* FCC 99-238, CC Docket No. 96-98, 15 FCC Rcd. 3696, para. 294 (Nov. 5, 1999) Third Report and Order).

4. If the TRA has a reasonable choice between adopting a policy that enhances the development of competition and one that has a chilling effect on competition, it should without question choose the former. In footnote 72 of its November 29, 2001 Order the TRA suggests that it may address this issue further in Docket No. 01-00526, *In re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection*. The TRA's current Order in this proceeding limits the ability of competitors to provide customers alternatives to BellSouth services. Thus, there will be little, if anything, on this issue for the Authority to study in Docket No. 01-00526. On the other hand, by allowing the CLECs a reasonable opportunity to provide competitive alternatives to these customers, the Authority will have a historical record upon which it can examine the impact its decision has had on competitive development. Consequently, the TRA can study the impacts of this "**pro-competitive**" decision in Docket No. 01-00526. Unless the Authority adopts this pro-competitive stance, there will be nothing to study in the generic docket except the status quo, i.e., BellSouth's continued monopoly. In making its choice on this issue the Authority should select the course that is most beneficial to the consumers and competition.

5. Disallowing the aggregation of customer lines is also consistent with the State policy of Tennessee that favors the development of competition:

> The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets...To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; ... (T.C.A. § 65-4-123).

T.C.A. § 65-4-123 establishes that it is State policy to foster efficient and technologically advanced telecommunications through the development of competition. The aggregation of customer lines constitutes an unreasonable disadvantage to CLECs by significantly limiting their ability to compete for this business. The aggregation of customer lines also is contrary to State policy and, thus, contrary to the public interest because it results in discouraging the development of competition. The Authority was on target when it stated in its November 29, 2001 Order that "the heart of this issue is a determination of how the FCC intended lines to be counted." Because the FCC's intent is not clearly stated, the best course of action for the TRA to follow is to favor the development of competition and consumer choice – a course that is consistent with State policy as articulated by the general assembly.

6. The decision to favor competition also was the ultimate conclusion of the Florida Public Service Commission in its arbitration of the AT&T/BellSouth interconnection agreement. In the FPSC's Final Order (6-28-01) it analyzed the issue of whether the FCC "intended for the rule [51.319(c)(2)] to apply on a per-customer basis as BellSouth supports, or on a per-location basis as AT&T asserts." The FPSC decided that an interpretation that favored the development of competition was preferable:

> While FCC Rule 51.319(c)(2) is silent on answering this specific concern in a direct fashion, we believe that the FCC's intent was to have the rule apply on the "per-location-within the MSA" basis that AT&T supported. ***Absent a more definitive statement or clarification from the FCC, we believe that this is the preferred finding.***[5] (emphasis added).

The FPSC Order on Reconsideration specifically clarified its initial decision by stating:

[5] FPSC Final Order, pp. 62-63.

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> BellSouth will not be allowed to aggregate lines provided to multiple locations of a single customer, within the same MSA, to restrict AT&T's ability to purchase local circuit switching at UNE rates to serve any of the lines of that customer.[6]

The Authority did not have the benefit of the FPSC Final Order and Order on Reconsideration at the time it made its decision. Based upon this recent authority finding that BellSouth should not be permitted to aggregate locations of a single customer, the Authority should reconsider its initial order and not allow BellSouth to escape its obligation to provide unbundled local switching at UNE rates.

ISSUE 12: WHEN AT&T AND BELLSOUTH HAVE ADJOINING FACILITIES IN A BUILDING OUTSIDE BELLSOUTH'S CENTRAL OFFICE, SHOULD AT&T BE ABLE TO PURCHASE CROSS CONNECT FACILITIES TO CONNECT TO BELLSOUTH OR OTHER CLEC NETWORKS WITHOUT HAVING TO COLLOCATE IN BELLSOUTH'S PORTION OF THE BUILDING?

7. The Authority stated in its final order that AT&T's condominium space is not part of BellSouth's premises and further required AT&T to collocate at BellSouth's premises before interconnecting to BellSouth's facilities.[7] In analyzing the issue, the Authority reasoned that section 251(c)(6) of the Act requires collocation at an ILEC's premises.[8] The Authority further stated that "premises" includes various buildings or land "owned, leased, or controlled" by an ILEC.[9] After finding that AT&T's condominium space does not fit the definition of "premises," the Authority dismissed AT&T's reasonable argument that direct connection was the proper method of interconnection in these few unique situations, and ordered AT&T to install and duplicate

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[6] FPSC Order on Reconsideration, p. 6.
[7] Final Order, p. 22.
[8] *Id.*
[9] *Id.*

equipment already located in the same building.[10] By ordering AT&T to collocate in these situations, the Authority stated that the FCC does not suggest "that the requirement to provide direct connection abrogates the limitation of section 251(c)(6) that the collocation be at the premises."[11] In Florida, the FPSC held in favor of AT&T's position regarding this issue in its final order on arbitration in the AT&T and BellSouth interconnection agreement arbitration.[12] Consequently, the TRA has a new legal authority and analysis before it, and the TRA should reconsider its position on this issue based on this new precedent.

8. By relying on a technical interpretation of the term "premises", the TRA's decision on this issue overlooks significant public benefits to be gained by allowing cross-connects in a "condominium" environment. These benefits include the conservation of scarce collocation space for other CLECs and the cost efficiencies that would be achieved by AT&T in the provision of their services to the public.

> Although we agree that the proposed direct cross-connection between AT&T and BellSouth's networks in the "condominium" buildings would be a new form of interconnection, we note that no other companies in Florida jointly use buildings as a result of AT&T's divestiture. Therefore, no other companies would be unfairly impacted, since additional collocation space would be available for local service providers other than AT&T, that might not otherwise be available. (FPSC Final Order, p. 85).

9. The Florida Commission also addressed the concern about the recent decision by the United States Court of Appeals for the District of Columbia Circuit

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[10] *Id.*
[11] Final Order, p. 23.
[12] FPSC Final Order, pp. 80-87.

regarding the ILEC obligations to provide co-carrier cross-connects[13], which the TRA felt constrained to follow.[14] The FPSC distinguished the Court of Appeals from the issue being arbitrated (the same as issue 12 in this docket) as follows:

> The Court decision addresses cross-connects between two or more collocating carriers, but [the Commission] notes that the cross-connects between AT&T and BellSouth only involve one collocating carrier, AT&T. Therefore, the Court decision should not impact the proposed AT&T/BellSouth cross-connects in a "condominium" arrangement, despite witness Milner's concern about the requirement of being "collocated within the BellSouth premises." (FPSC Final Order, p. 85).

10. The FPSC states "the direct connection arrangement between BellSouth and AT&T will be permitted only in the limited context of 'condominium' structures, since no other structures are subject to the lawfully executed agreements."[15] In it's reasoning for this outcome, the FPSC noted, as does the Authority in its Final Order, "a direct connection arrangement may appear to 'expand the definition of premises beyond that which is required by the FCC regulations.'"[16] However, the FPSC maintains "the unique circumstance surrounding these lawfully executed agreements (the agreements that will provide specific detail usage clauses for this arrangement) should mitigate these concerns, since the arrangement is only permissible in the very limited instance of the 'condominium' buildings."[17] Even if Section 251(c)(6) of the Act can be read to require physical collocation "*at* the premises of the local exchange carrier,"[18] the condominium arrangement, which is "at the premises of the local exchange carrier",

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[13] *GTE Service Corporation v. Federal Communications Commission, 2000 U.S. App. LEXIS 4111.*

[14] See Transcript of Directors Conference, Tuesday, September 25, 2001, p. 92.
[15] FPSC's Final Order, p. 86.
[16] *Id.*
[17] *Id.*
[18] 47 U.S.C. § 251(c)(6) (emphasis added).

allows AT&T to interconnect with BellSouth's network without contributing to the exhaustion of collocation space of the building. Additionally, as direct interconnection would be "a new form of interconnection," the FPSC points out that "no other companies would be unfairly impacted, since *additional collocation space would be available* for local service providers other than AT&T, *that might not otherwise be available.*"[19]

11. The FPSC's order is directly in line with the intent of the FCC's orders. In the *Expanded Interconnection Order* docket, the FCC specifically considered whether AT&T should be required to go to the manhole for entry to the BellSouth central office in circumstances where condominium arrangements existed.[20] The FCC concluded that "[w]e will not require that entities already located in the same building as a LEC central office actually route fiber optic facilities out of the building and back in through the same route used by other interconnectors, however, since that would use potentially scarce riser and cable vault space."[21] Additionally, the FCC noted in the *Advanced Services Order* "one of the major barriers facing new entrants that seek to provide advanced services on a facilities basis is the lack of collocation space in many incumbent LEC premises."[22] Moreover, in the most recent collocation order,[23] the FCC reinforced its position that collocation offerings need to be expanded due to space exhaust as the FCC confirmed:

> in the *Advanced Services First Report and Order*, the Commission modified the collocation rules to remove

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[19] FPSC's Final Order at p. 85. (emphasis added)

[20] *Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, 9 FCC Rcd 5154 (1994) (the "*Expanded Interconnection Order*").

[21] *Expanded Interconnection Order*, at ¶¶ 65-66

[22] First Report And Order and Further Notice of Proposed Rulemaking, Deployment of Wireline Service Offering Advanced Telecommunications Capability, FCC 99-48, CC Docket No. 98-147 (rel. March 31, 1999) ("Advanced Services Order") at ¶56.

[23] Fourth Report And Order, Deployment of Wireline Service Offering Advanced Telecommunications Capability, FCC 99-48, CC Docket No. 98-147 (rel. August 8, 2001) ("FCC Collocation Order").

> barriers to telecommunications competition, particularly in the nascent advanced services market.[24] These rules require incumbent LECs to expand their collocation offerings . . . [and] when collocation space is exhausted at a particular incumbent LEC location, the incumbent LEC must permit collocation in adjacent controlled environmental vaults or similar structures to the extent technically feasible.

The FCC also explained, "that these strengthened collocation rules should serve as minimum requirements and [the FCC] continue[s] to recognize that the state commissions may adopt additional collocation requirements."[25] Direct interconnection in these very few condominium arrangements allows BellSouth to preserve precious collocation space at its premises that may otherwise be used by CLECs. Based upon the FPSC's finding and consistent with the intent of the FCC, the Authority should properly reconsider this issue and hold that AT&T should be able to purchase cross-connect facilities to connect to BellSouth without having to collocate in BellSouth's portion of the building.

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24 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, 4773-74, ¶¶. 23-24 (1999) (*Advanced Services First Report and Order), aff'd in part, and vacated and remanded in part sub nom. GTE Service Corp. v. FCC*, 205 F.3d 416 (D.C. Cir. 2000) (*GTE v. FCC*), *on recon., Collocation Reconsideration Order*, 15 FCC Rcd at 17806-39, ¶¶. 1-69.

25 FCC Collocation Order at ¶10.

WHEREFORE, AT&T respectfully requests that the TRA reconsider its initial decisions regarding issues Nos. 10 and 12 as set forth above and additionally requests the Authority to grant an extension of time for filing the interconnection agreement between the parties until thirty (30) days after an order has been rendered on motions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Petition of AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. for Reconsideration of Initial Order was served by Facsimile, hand delivery and/or U.S. mail on the following known parties of record this 14th day of December, 2001:

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