BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

January 14, 2002

VIA HAND DELIVERY

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

Re: *Interconnection Agreement Negotiations 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. 00-00079

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Response to AT&T's Motion for Reconsideration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy Hicks

Guy M. Hicks w/permission ch

GMH:ch
Enclosure

428492

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Interconnection Agreement Negotiations 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. 00-00079

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE TO AT&T'S MOTION FOR RECONSIDERATION

I. INTRODUCTION

Pursuant to the Tennessee Regulatory Authority's ("TRA") Notice dated December 31, 2001, BellSouth Telecommunications, Inc. ("BellSouth") herewith replies to the Petition for Reconsideration of Initial Order filed by AT&T Communications of the Southern States, Inc and TCG MidSouth, Inc. (collectively "AT&T") in the referenced proceeding.

AT&T challenges the TRA's decision on two issues, Issue 10, dealing with the question of whether a specific customer's lines, located at different points in the same geographic area, can be aggregated for purposes of determining whether BellSouth has to provide AT&T with unbundled switching to serve that customer, and Issue 12, dealing with the question of whether AT&T should be allowed to take advantage of its prior ownership of BellSouth, to the detriment of other Competitive Local Exchange Carriers (CLECs) in Tennessee. AT&T's position on both points is without merit.

II. ISSUES

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? (UNEs, Attachment 2)

This dispute involves the application of FCC Rule 51.319 (c)(2), which provides that an ILEC shall not be required to provide unbundled local switching in certain geographic areas, provided that the ILEC provides non-discriminatory access to a combination of unbundled loops and transport (Enhanced Extended Links or EELs) throughout the relevant geographic area. The rule specifically provides that the ILEC does not have to provide unbundled switching for end users with four or more voice grade equivalents or lines in Density Zone 1 in a top 50 Metropolitan Statistical Area, provided it makes EELs available to requesting telecommunications carriers in that area. (Transcript Vol. 1, p. 85).

The specific dispute that the Authority was asked to resolve involved the question of whether the four lines identified in the rule have to be all located at the same premises or whether it is sufficient that the customer has four or more lines located anywhere in that geographic area. AT&T's position is that the lines all have to be located at the same premises. BellSouth's position is that with the availability of EELs, the actual geographic location of the customer's lines, as long as they are all within the MSA, is obviously irrelevant. The TRA, quite properly, determined that BellSouth's position was correct.

AT&T's position on reconsideration is pretty simple. First, it notes that the Florida Public Service Commission ("FPSC") decided this issue in AT&T's favor since the original briefs were filed and therefore presumably the TRA should be swayed by the FPSC's decision and reverse its own position. This of course ignores the fact that the Georgia Public Service Commission, as referenced in BellSouth's original brief, ruled in opposition to AT&T's position, something AT&T doesn't appear to mention in its motion for reconsideration or in its main brief. BellSouth concurs that it may in fact be useful to look at decisions in other jurisdictions to determine whether a particular logic has had any acceptance anywhere. Picking and choosing the particular state that it wants to rely on, however, wouldn't seem to constitute a valid ground for reconsideration.

AT&T also seems to want to rely on an argument that since the FCC hasn't definitively resolved this issue, that it should be resolved in AT&T's favor because such a decision would "favor" competition, the ostensible rationale of the Florida commission, as cited by AT&T. The problem with both the Florida commission's analysis and AT&T's logic is that the FCC has made the determination that the relevant division that drives the exception in question is based on the size of the customer, and whether the customer is more like a residential or small business customer, or more like a medium to large business customer. The FCC concluded that any business that has three or fewer lines is likely to share more in common with the consumer mass market than with medium to large businesses. *UNE Remand Order* ¶ 293. If the owner of a Starbuck's franchise has twenty stores in

Nashville, each with two telephone lines, how can AT&T possibly argue that such a person is more like a residential or small business customer and not like a medium to large business customer? Such a conclusion defies logic. If anyone who approached this issue logically tried to argue that the owner of twenty franchise stores in Nashville was really just a small business customer, such an argument would be given no credibility; yet that is precisely what AT&T argues in this case.

The decision of the TRA on this matter was correct. AT&T offers only an additional decision from another jurisdiction as the basis for its motion for reconsideration. The Florida commission decision offers nothing that would suggest that the FCC meant anything other than what the plain language of its rule and the discussion of that rule means. The TRA should affirm its decision on Issue 10.

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? (Collocation, Attachment 4)

The second issue that AT&T has sought reconsideration on is Issue 12. This issue arises solely because of AT&T's former ownership of BellSouth's predecessors. There are buildings in Tennessee where AT&T and BellSouth have a "condominium" arrangement. That is, one company owns the building, and the other company has facilities in the building, generally on a separate floor. (Milner Prefiled Direct, pp. 21-22). In such circumstances, AT&T essentially wants to be able to "punch" a hole in a common wall, and to run its facilities into BellSouth's

space, without collocating in that space. Stated another way, AT&T wants to expand the definition of "premises" beyond that required by the FCC and beyond that which is fair. *Id.* The TRA has correctly determined that AT&T's position with regard to this issue is incorrect, ruling in BellSouth's favor.

In seeking reconsideration, AT&T characterizes its position as "reasonable" and suggests that the Florida Public Service Commission has reached a conclusion consistent with AT&T's. Again, of course, this ignores the decisions in the other BellSouth states where AT&T chose to raise this issue. Moreover, it continues to ignore the fundamental issue that such a decision gives AT&T an advantage over its competitors who would not have similar opportunities.

AT&T again relies of certain statements of the FCC to support its argument, which require some additional comment. First, AT&T raised the 1992 FCC decision, which AT&T refers to as the "Expanded Interconnection Order" in its original brief[1], just as it has done in its motion for reconsideration, and thus raises no new issue for the TRA to consider. In any event, AT&T's reliance on the cited case is inappropriate. Specifically, AT&T cites to the FCC's language in that decision where the FCC refused to require AT&T to take fiber optic cables out of a condominium building to a "manhole" and then back to the condominium building. According to AT&T the FCC concluded that it would "not require that entities already located in the same building as a LEC central office actually route fiber

[1] Actually, in its brief in chief it correctly cited the 1992 decision upon which it relies. In its petition for reconsideration, AT&T incorrectly cites to a 1994 decision for the same proposition, which was incorrect. For the purpose of this response, BellSouth will assume that AT&T intended to cite to the correct case.

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." (Petition at page 9) AT&T correctly quotes the FCC, but fails to address the relevant point. BellSouth's position, and the position of the TRA, is that to allow AT&T to do what it wants would unduly favor AT&T to the detriment of the other CLECs who did not have such condominium arrangements. The FCC, in the same order relied upon by AT&T, but in a section not cited by AT&T, addressed this very point, saying:

> While we are not requiring that interconnectors located in LEC central office buildings run fiber optic facilities out to the interconnection point and back into the building, they must compensate the LEC as if the LEC provided those faculties and interconnect exactly like other parties in all remaining respects. This greatly reduces potentially unfair advantages associated with having a POP located in the same building as a LEC central office. *Expanded Interconnection Orde*r, at paragraph 68.

The point is that AT&T didn't mention that the FCC recognized the exact problem that BellSouth raised and the TRA identified, the fairness of letting AT&T take advantage of its former ownership of BellSouth's predecessors, and fixed the problem by requiring AT&T to pay the same amount for it interconnection in the condominium buildings that another carrier who was not collocated would have had to pay. This record contains no offer by AT&T to pay BellSouth the exact amount that it would have incurred had it actually collocated on BellSouth's premises, instead of just "punching" through the walls. Without such an offer, AT&T's reliance on the 1992 FCC interconnection order is at best misplaced.

The TRA has made the correct decision with regard to Issue 12. AT&T is simply seeking an advantage over its competitors, and is claiming the scarcity of collocation space as the vehicle for that argument. Even if it had merit, to be consistent with the very decisions cited by AT&T, it would have had to offer to pay what other carriers would pay for collocation, which of course it did not. The TRA should affirm its decision with regard to Issue 12.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

Guy M. Hicks w/permission (GH)

Guy M. Hicks
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6301

R. Douglas Lackey
Suite 4300, BellSouth Center
675 W. Peachtree Street, N.E.
Atlanta, GA 30375

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[✓] U.S. Mail
[ ] Facsimile
[ ] Overnight Mail
[ ] Electronic Mail

James Lamoureux, Esquire
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309

[ ] Hand
[✓] U.S. Mail
[ ] Facsimile
[ ] Overnight Mail
[ ] Electronic Mail

Jack Robinson, Esquire
Gullett, Sanford, Robinson & Martin
230 Fourth Ave., N., 3d Fl.
Nashville, TN 37219-8888

Gary Hecks
w/permission ch

198870