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September 23, 2004

VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Generic Docket Addressing Rural Universal Service*
Docket No. 00-00523

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth's *Response in Opposition to the Petition for Reconsideration by the Rural Independent Coalition of Small Local Exchange Carriers and Cooperatives.* Copies of the enclosed are being provided to counsel of record

Cordially,

Joelle Phillips

JJP:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Generic Docket Addressing Rural Universal Service*

Docket No 00-00523

BELLSOUTH TELECOMMUNICATIONS, INC.'S RESPONSE IN OPPOSITION TO THE PETITION FOR RECONSIDERATION BY THE RURAL INDEPENDENT COALITION OF SMALL LOCAL EXCHANGE CARRIERS AND COOPERATIVES

BellSouth Telecommunications, Inc. ("BellSouth") files this *Response in Opposition to the Petition for Reconsideration* ("*Response*") by the Rural Independent Coalition of Small Local Exchange Carriers and Cooperatives ("ICOs") and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

INTRODUCTION

The Petition by the ICOs raises nothing new. In fact, this matter has long been disputed before the Authority. The Panel's decision to amend the Hearing Officer's *Order* issued May 6, 2004 brings a reasonable closure to a conflict that has been long lasting and which threatens to delay progress in other dockets. As explained below, the Authority's *Order* is well founded, and the Authority should not change that *Order*.

I. THE INJUNCTIVE RELIEF ESTABLISHED BY THE *FIRST INITIAL ORDER* ISSUED ON DECEMBER 29, 2000 WAS SQUARELY BEFORE THE PANEL.

In their *Petition*, the ICOs wrongly urge that the Authority erred as a matter of procedure by amending relief issued in a December 29, 2000 *Order*. The claim that their exists "no lawful procedural nexus between the sudden grant of this relief and the

matters noticed for review and consideration before the Authority" is flatly inconsistent with the pleadings and Agenda notices issued in this matter.

As a practical matter, it was the injunctive relief set forth in that *Order* that formed the basis of the ICOs' insistence that BellSouth provide compensation. Likewise, that *Order* was the basis of the legal analysis in the Hearing Officer's May 6 *Order*. To suggest that parties were somehow unaware that that *Order* was at issue is simply foolish.

On September 22, 2004, the Authority issued an *Order* confirming that:

> 5. Oral Argument on all motions for reconsideration, including *Substitute Version of BellSouth Telecommunications, Inc.'s Motion for Reconsideration or, in the Alternative, Clarification of the Initial Order of Hearing Officer for the Purpose of Addressing Legal Issues 2 and 3 Identified in the Report and Recommendation of the Pre-Hearing Officer Filed on November 8, 2000* filed on July 25, 2002, shall be heard by the Panel at the June 21, 2004 Authority Conference.

The reference to these motions clarified that not only was the May 6 *Order* at issue, but also the continuing application of the December 29, 2000 *Order*.

Most importantly, the suggestion that the TRA could not revisit an *Order* to determine whether the relief in that *Order* should be altered or terminated is without support, especially where, as here, the relief in that *Order* was expressly described as temporary in nature. The Authority took a practical, logical look at the December 29, 2000 *Order*, and more specifically, the effect of that *Order* on the continuing progress in the docket and correctly determined that the *Order* had been applied in an overbroad manner and that, in light of the new developments in the case, the *Order* should be altered to avoid further problems. The original December 29, 2000 *Order* was an order driven by policy, not by contract, statute or rule. The TRA's recognition that the policy

goals it attempted to further through that *Order* were no longer being furthered by that *Order* provided good cause for the change in direction chosen by the Panel.

II. THE ICOs' PETITION IS MISLEADING WITH RESPECT TO THE REFERENCE TO "NEGOTIATED RATES EXISTING IN APPROVED AGREEMENTS IN THE BELLSOUTH REGION."

The record in this docket is clear that members of the ICO coalition have, in fact, submitted two separate interconnection agreements with CMRS providers to the TRA for approval, and that the rates in those two contracts are *Wireless Interconnection Agreement Between TDS Telecom and Verizon*, docket No. 02-00973, approved by TRA Panel, Kyle, Jones, Tate, order issued November 13, 2002; *Wireless Interconnection Agreement between Cingular Wireless and Highland Telephone Cooperative, Inc.*, docket No. 01-00873, approved by TRA Panel, Kyle, Greer, Malone, order issued January 17, 2002. It was clear during deliberations and argument that the reference to other negotiated rates was a reference to the rates in existing interconnection agreements approved by the Authority. The ICOs' *Petition*, which references settlement agreements in other states, is simply a red herring. Such settlements did not form the basis of the Panel's decision.

III. THE PANEL CORRECTLY IMPOSED AN END DATE ON PAYMENTS FROM BELLSOUTH AND PROVIDED FOR A TRUE-UP, SUCH THAT BELLSOUTH WOULD NOT PAY MORE THAN THE RATE ULTIMATELY DETERMINED FOR THE TERMINATION OF WIRELESS TRAFFIC IN THE WIRELESS ARBITRATION.

The ICOs have continually argued, without support in the primary carrier contract, that BellSouth has an obligation to provide payment for wireless traffic that it does not originate. There is no such obligation in the Primary Carrier Plan or interconnection agreement between BellSouth and any member of the ICO coalition. In

fact, what those contracts do provide is that BellSouth has a contractual right to terminate those contracts on 30-days' notice The ICOs' continuing insistence that BellSouth has an "obligation" is unpersuasive because the ICOs can point to no statute, rule or contract imposing such an obligation. Their sole support of such an obligation was the December 29, 2000 *Order* by the TRA. That *Order* provided for BellSouth to continue making payments for intraLATA toll traffic (with no reference to wireless traffic) until such time as that arrangement was "modified by the Authority". Such a modification came when the Panel issued its September 1, 2004, decision. BellSouth has paid the ICOs under the December 29, 2000 *Order* for nearly four years as it attempted to resolve this conflict through negotiation, to no avail. The Authority made the just and equitable decision that this obligation was not moving the parties closer to resolution and should end.

The Authority has often used the true-up process to address interim payments and to ensure fairness. Such a process is particularly necessary in this case where it is not BellSouth who has an obligation with respect to the termination of such traffic. As a party with no contractual obligation, it would defy reason for BellSouth to be required to pay at a higher rate than the rate deemed appropriate by the Authority in the context of the arbitration.

CONCLUSION

Throughout this dispute, the ICOs have continually used phrases like "interconnection arrangement" and "terms and conditions", attempting to create an obligation on BellSouth where none exists in contract, rule or statute. The "terms and

conditions" referenced by the ICOs are simply the coalition's demand. BellSouth has never agreed to such demand and is not obligated by any law to cede to such demand.

The Authority correctly resolved this longstanding dispute in a fashion that created a reasonable compromise. Neither party received precisely what it sought. Specifically, BellSouth, who maintains that it has no obligation, did not completely escape payment and did not receive a true-up of the payments it has made in the past On the other hand, the ICOs, who insist on payment indefinitely, did not receive that either. Instead, the Authority chose a compromise rate and a reasonable duration for payment. The *Order* is neither flawed in its understanding of the relevant facts or in its application of the law, and the Panel's decision should stand.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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