BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In re:	)	
Docket to Determine the Compliance	)	
of BellSouth Telecommunications, Inc.'s	)	
Operations Support Systems with State	)	Docket No.: 01-00362
and Federal Regulations	)	

OPPOSITION TO THE MOTION FOR RECONSIDERATION

AT&T Communications of the South Central States, L.L.C. and TCG MidSouth, Inc. (collectively "AT&T"), and MCI Worldcom, Inc. hereby submit to the Tennessee Regulatory Authority ("TRA" or "Authority") their Opposition to the Motion for Reconsideration filed by BellSouth Telecommunications, Inc. on July 8, 2002 ("*BellSouth's Motion*").

ARGUMENT

In its *Order Resolving Phase I Issues of Regionality* ("*Regionality Order*"), a majority of the Authority's Directors held that "BellSouth failed to satisfy its burden of establishing that its pre-ordering, ordering, provisioning, maintenance and repair and billing systems are regional."[1] BellSouth has requested that the new directors of the Authority reconsider or rehear its decision in that contested case.[2] While BellSouth may desire to have a second bite at the apple, there is no basis in law or fact to justify reconsideration or rehearing.

[1] *Regionality Order at 43.*

[2] BellSouth has styled its request as a Motion for Reconsideration. The TRA Rule 1220-1-2-.20 provides for Petitions for Reconsideration, whereas T.C.A. § 65-2-114 provides for Petitions for Rehearing. We consider a Petition for Reconsideration and a Petition for Rehearing to be substantively the same.

Under T.C.A. § 65-2-116, the grounds for a rehearing are: (1) some material error of law committed by the Authority; (2) some material error of fact committed by the Authority; or (3) the discovery of new evidence sufficiently strong to reverse or modify the Authority's order, and which could not have been previously discovered by due diligence. The Supreme Court of Tennessee has long held that the purpose of a petition for rehearing "is to call the attention of the court to matters overlooked, not to those things which counsel supposes were improperly decided after full consideration."[3] Ostensibly, BellSouth argues that the Authority committed material errors of law and fact. The substance of BellSouth's Motion, however, is to reargue matters that the Authority fully considered after a lengthy hearing and thorough legal briefings in the hope that it will have better luck with the new slate of Directors. Accordingly, the Authority should deny BellSouth's Motion.

I. THE AUTHORITY DID NOT COMMIT A MATERIAL ERROR OF LAW IN HOLDING THAT BELLSOUTH DID NOT ESTABLISH THAT ITS OPERATIONAL SUPPORT SYSTEMS ARE REGIONAL

A. The Authority's Order is Not Contrary to Authoritative Legal Precedent

BellSouth argues that the Authority's Order is contrary to "authoritative" legal precedent.[4] Essentially, BellSouth claims that the Authority cannot conclude that BellSouth's

[3] *Wilson v. Tennessee Farmers Mutual Insurance Co.*, 219 Tenn. 560, 411 S.W. 2d 699 (1967).

[4] *BellSouth Motion, at 1.*

OSS are not regional because the FCC concluded that BellSouth's OSS were regional in its *Georgia/Louisiana Order*.[5] BellSouth's argument, however, is flawed.

First, the FCC never intended that its *Georgia/Louisiana Order* would somehow restrict the Authority's investigation into the regionality of BellSouth's OSS. Indeed, in the context of third party testing, the FCC concluded that it must grant states "wide latitude to design an appropriate OSS test."[6] The same holds true for regionality assessments. The FCC, moreover, "will look to the state to resolve factual disputes wherever possible. Indeed, we view the state's and the Department of Justice's role to be one similar to that of an 'expert witness.'"[7] The FCC also has stated that "where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight in making our decision."[8] In other words, the FCC expects the state to exercise its expert judgment in conducting an exhaustive and rigorous investigation aimed at resolving disputed issues, such as regionality. That is precisely what the Authority did in Phase I of the OSS Docket, and there is nothing in the *Georgia/Louisiana Order* that should supplant that determination.

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[5] Memorandum Opinion and Order, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Service in Georgia and Louisiana,* (No. CC 02-35, FCC 02-147) (May 15, 2002) ("Georgia/Louisiana Order").

[6] *Georgia/Louisiana Order ¶ 107.*

[7] Memorandum Opinion and Order, *In the Matter of Application by Bell Atlantic New York for Authorization under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New* York, 15 FCC Rcd. 3953 ¶ 51 (F.C.C. Dec. 22, 1999) (No. CC 99-295, FCC 99-404) ("*Bell Atlantic New York Order*").

[8] *Id.*; *see also* Memorandum Opinion and Order, *In the Matter of Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long*

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Second, the FCC's regionality findings in its *Georgia/Louisiana Order* are not legally binding on the Authority. The Authority convened its OSS Docket to evaluate BellSouth's compliance with state and federal law. It goes without saying that the FCC's orders on BellSouth's Section 271 applications in other states would not bind the Authority with respect to state law. The same is true with respect to federal law. The FCC has concluded that its findings regarding a Section 271 application in one state are not binding on the FCC in a Section 271 proceeding involving the same RBOC in another state. As the FCC explained in its *Kansas/Oklahoma Order*:

> We emphasize, however, that the statute requires us to make a separate determination of checklist compliance for each state and, accordingly, we do not consider any finding from the *SWBT Texas Order* to be dispositive of checklist compliance in this proceeding. While our review may be informed by our prior findings, we will consider all relevant evidence in the record, including state-specific factors identified by commenting parties, the states, the Department of Justice.[9]

Clearly, if the FCC's findings in its *Georgia/Louisiana Order* will not be dispositive in future BellSouth Section 271 proceedings before the FCC, the same findings cannot possibly be dispositive in Phase I of the Authority's OSS docket.

Finally, the factual records before the Authority and the FCC were different. Under Tennessee law, the Authority must render its decisions based on the evidentiary record before the Authority, not the record before the FCC. Unlike the FCC, the Authority conducted a four-day

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Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, 16 FCC Rcd. 6237 ¶ 10 (F.C.C. Jan. 22, 2001) (No. CC 01-29, FCC 00-217) ("*SWBT Kansas/Oklahoma Order*").

[9] *SWBT Kansas/Oklahoma Order ¶ 35.*

hearing that focused exclusively on regionality. Unlike the FCC, the Authority watched and heard live sworn testimony of witnesses from BellSouth, KPMG, PWC, and AT&T, and the Authority cross-examined these witnesses. Moreover, the set of documents submitted into the record in Tennessee were different than the set of documents submitted in the FCC proceeding.

In sum, the Authority's Regionality Order made clear that Directors considered the FCC's *Georgia/Louisiana Order*, but a majority of the Directors concluded that the evidence before them warranted a different finding than the one reached by the FCC. The mere fact that the Authority reached a different conclusion than the FCC on a different record, however, is not a proper ground for reconsideration.

B. The Authority Properly Analyzed the BellSouth's Self-Reported OSS Processes

BellSouth complains that the Authority examined processes that had "no nexus" or "nor relevance" to the regionality of BellSouth's OSS.[10] BellSouth's complaint is puzzling because the Authority simply examined some of the OSS processes, systems and procedures that BellSouth asserted were used to provide wholesale elements and services in Tennessee.

On September 6, 2001, the Authority promulgated an Issues List for Phase I of the OSS Docket.[11] In conjunction with the Issues List, the Authority required BellSouth to provide a matrix that identified all of the OSS processes, systems, and procedures used by BellSouth to

[10] *BellSouth's Motion at 3-4.*

[11] *Regionality Order at 6-7.*

provide wholesale elements and services in Tennessee.[12] Initially, BellSouth did not provide the required matrix to the Authority. After being directed on several occasions to do so, BellSouth ultimately provided a matrix on Friday, November 30, 2001 (the last business day before the Phase I Hearing) that identified the various test criteria in the Georgia and Florida master test plans.[13] As Director Greer subsequently noted, however, even that matrix was incomplete:

> BellSouth neither provided the complete matrix of its OSS components that the Authority sought before the hearing, nor did its witnesses review the incomplete matrix that BellSouth filed. Through the hearing, BellSouth did not supply, nor did the intervenors draw out, much useful information pertaining to many of the OSS processes identified in the Georgia and Florida master test plan.[14]

The various processes that are the subject of BellSouth's complaint were identified by BellSouth in the matrix it submitted to the Authority. Thus, BellSouth has no legitimate basis to argue now that these processes are unrelated to BellSouth's OSS.

C. The Authority Did Not Cite an Incorrect Legal Standard of Review

BellSouth further argues that the Authority cited an incorrect legal standard of review. BellSouth's argument reflects a misunderstanding of the procedural framework of the OSS Docket and the Authority's Order. As its caption indicates, the OSS Docket was established to determine the compliance of BellSouth's OSS with state and federal law. Indeed, the Authority has confirmed that the ultimate purpose of this Docket was "to explore whether competing local

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[12] *Id.* at 7.

[13] *Order Denying BellSouth's Request for Extension of Time, Docket No. 01-00362 (Nov. 29, 2001).*

[14] Authority Conference (May 21, 2002) Tr. 41.

exchange carriers (CLECS) operating in Tennessee have nondiscriminatory access to BellSouth's Operations Support Systems (OSS) as required by state and federal law."[15] Phase I of the OSS Docket focused on the regionality of BellSouth's OSS, and Phase II would focus on the reliability of OSS testing in other states and BellSouth's OSS data.[16]

In its *Regionality Order*, the Authority first identified the "standard of review" or legal test for the overall OSS Docket (i.e., nondiscriminatory access).[17] The Authority subsequently identified the "standard of review" or legal test for Phase I. Specifically, the Authority explained that:

> the Directors employed the definition of regionality provided by BellSouth's witness, Milton McElroy: that the applications and interfaces implemented and available are identical across the nine-state region. Under this definition, "identical" means one set of software coding and configuration installed on either one or multiple computer servers that support all nine states in any equitable manner.
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> A majority of the Directors determined that where any material OSS component is found to be not regional, then the process of which that component is a part is necessarily not regional as well.[18]

The Authority further explained that they could not rely on a review of BellSouth's OSS that was limited to "sameness" and did not attempt to validate whether BellSouth's OSS produced substantially the same results:

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[15] Order Establishing Issues and Procedural Schedule, *In re Docket to Determine the Compliance of BellSouth Telecommunications, Inc.'s Operations Support Systems With State and Federal* Regulations, TRA Docket No. 01-00362 (September 13, 2001) at 1-2.

[16] *Regionality Order, at 6-9.*

[17] *Regionality Order, at 33-34.*

> According to the majority, a conclusory prediction of regionality based upon sameness disregards the ultimate goal of performance evaluation. A majority of the Directors determined that without such an investigation [of performance] a conclusive finding of regionality cannot be reached.[19]

In short, BellSouth's argument that the Authority "cited" an incorrect legal standard of review has no merit. As explained above, the Authority explained the "standard of review" for the overall OSS Docket and for the Phase I hearing.[20] While BellSouth does not agree with the Authority's conclusion, BellSouth does not and cannot seriously contend that the Authority examined "nondiscriminatory access" instead of "regionality."

D. The Authority Applied an Appropriate Legal Standard

BellSouth argues that the Authority committed a material error of law by applying "a standard that necessitated a showing that 'BellSouth's systems produced substantially the same results' to find BellSouth's OSS regional."[21] According to BellSouth, the Authority's standard was erroneous because it was different than the standard applied by the FCC. BellSouth's argument has no merit. The issue of the appropriate legal standard for regionality was addressed by BellSouth and the CLECs at the Phase I hearing and in post-hearing briefs. The Authority

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[18] *Regionality Order, at 35-36.*

[19] *Regionality Order at 37.*

[20] Even if the Authority had "cited" an incorrect legal standard, such a draftsmanship error would not constitute a material error of law. The Order makes clear that the Authority employed BellSouth's definition of regionality and used its best judgment to weigh the evidence in the record to reach the conclusion that BellSouth did not establish that its OSS are regional.

[21] *BellSouth Motion at 7.*

fully considered all of the arguments before reaching its decision. BellSouth's Motion on this point amounts to nothing more than rehashing old arguments and should be denied.

While the Authority reached a different conclusion than the FCC regarding the regionality of BellSouth's OSS, the standard applied by the Authority was not contrary to the FCC's concept of regionality. As BellSouth acknowledges in its Motion, the FCC's concept of regionality is that similarities in an RBOC's OSS from one state to another will result in similar performance in each state.[22] Instead of relying on a "conclusory prediction of regionality," the Authority sought comparative performance data to establish whether BellSouth's OSS actually produce similar performance results from state-to-state. That is not inconsistent with the FCC concept of regionality. Indeed, the FCC noted in its *Kansas/Oklahoma Order* that "evidence suggesting that billing systems function differently in different states, or competing carriers' assertions that they receive different treatment in different states" could undermine an RBOC's regionality claim.[23] The FCC, moreover, explained that "evidence of satisfactory performance in another state cannot trump convincing evidence that an applicant fails to provide nondiscriminatory access to a network element in the applicant state."[24] Simply put, the Authority's conclusion that comparative performance data is the best evidence of regionality is not contrary to the FCC's concept of regionality.

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[22] *BellSouth's Motion at 6-7; SWBT Kansas/Oklahoma Order* ¶ 113 ("In the end, we find that it is reasonable to conclude that the existence of these similarities will result in similar performance."), ¶ 111 ("Where SWBT has discernibly separate OSS, SWBT demonstrates that its OSS reasonably can be expected to behave the same way in all three states.").

[23] *SWBT Kansas/Oklahoma Order* ¶ 164 n.472.

[24] *SWBT Kansas/Oklahoma Order* ¶ 36.

In any event, the Authority's regionality standard is eminently reasonable. The sole purpose of evaluating regionality is to determine whether it is appropriate to rely on performance data and test results from another state as a surrogate for Tennessee-specific performance data and test results. If comparative performance data and other evidence demonstrates (as it did here) that BellSouth's OSS can and do produce substantially different performance results from one state to another, then it cannot be appropriate to rely on performance data from another state as an accurate indicator of BellSouth's performance in Tennessee. Not surprisingly, BellSouth does not argue in its Motion that the Authority applied an unreasonable standard, nor does BellSouth attempt to rebut the Authority's logic. Accordingly, the Authority should deny BellSouth's Motion.

II. THE AUTHORITY DID NOT COMMIT A MATERIAL ERROR OF FACT IN FINDING THAT BELLSOUTH DID NOT ESTABLISH THAT ITS OPERATIONAL SUPPORT SYSTEMS ARE REGIONAL

A. The Authority Properly Considered All of the Relevant Evidence in the Record

In its Regionality Order, the Authority provides a six-page summary of BellSouth's arguments, complete with cites to BellSouth's Post Hearing Brief.[25] It is clear from this detailed summary that the Authority fully considered all of the relevant evidence in record.

BellSouth, however, complains that the Authority misinterpreted the evidence. BellSouth cites to portions of its pre-filed testimony that allegedly address particular OSS. These citations, however, do not establish that the Authority committed some material errors of fact. The pre-filed testimony cited by BellSouth consists of passing references, general descriptions, and

[25] *Regionality Order, at 25-31.*

unsupported self-serving conclusory statements that its systems are regional. The Authority judged the credibility of the witnesses at the hearing and determined the appropriate weight to give to their pre-filed testimony given the entirety of the evidentiary record. In its Motion, BellSouth points to no evidence that conclusively establishes the Authority factual findings were erroneous. BellSouth fails to point to any comparative performance data that demonstrates its OSS performance substantially the same from state-to-state. Rather, BellSouth relies exclusively unsupported testimony. Simply saying BellSouth's OSS are regional, however, is not sufficient to demonstrate that the Authority committed a material error of fact in concluding that BellSouth's OSS were not regional. Indeed, as the Authority concluded, the evidence in the record did not provide sufficient support for BellSouth's claim that its OSS are regional.

B. The Authority's Analysis of BellSouth's Flow Through Data Was Appropriate and Correct

BellSouth complains that the Authority's reliance on Exhibit 1, which was attached to the Regionality Order, "offends due process" because "the unknown author" of the exhibit "should have been subject to cross-examination and impeachment" regarding the conclusions in the exhibit.[26] BellSouth's argument has no merit.

As discussed further below, the Tennessee courts have held that the Directors of the TRA are not "hamstrung by the naked record" in a regulatory proceeding but may "superimpose upon the entire transaction [the agency's] own expertise, technical competence, and specialized knowledge."[27] Indeed, the state Uniform Administrative Procedures Act ("UAPA") explicitly

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[26] *BellSouth Motion at 13, 15.*

[27] *CF Industries v. Tenn. Public Service Commission*, 599 S.W. 2d 536, 543 (Tenn. 1980).

provides that the "agency member's experience, technical competence and specialized knowledge may be utilized in the evaluation of evidence."[28] Similarly, Section 65-2-109(4) of the Tennessee Code provides that the "authority may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it." That is precisely what the Authority did in its empirical analysis of flow through data supplied by BellSouth. Not surprisingly, BellSouth's Motion makes no mention of this case law or statutes.[29]

On a more basic level, BellSouth's Motion appears to be little more than a thinly veiled attack on the integrity of former Director Lynn Greer who prepared Exhibit 1 and distributed it to the other Directors during the agency's public deliberations on this matter. With the concurrence of former Director Melvin Malone, the agency's final Order incorporates the exhibit and uses it to support the agency's conclusion that BellSouth's level of service provided to CLECs in Tennessee is clearly not the same as the level of service provided in other states. *See* Order, at 41.

Although Director Greer repeatedly stated on the record that Exhibit 1 was "my analysis,"[30] BellSouth implies, without any evidence to support the allegation, that Exhibit 1 was prepared by some "unknown person" whom BellSouth should be able to cross-examine.

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[28] *T.C.A. § 4-5-314(d).*

[29] BellSouth does cite to an unpublished decision by the Tennessee Court of Appeals, *Tenn. Consumer Advocate v. Tenn. Regulatory Authority*, 1997 WL 92079 (Tenn. Ct. App., 1997) in which the Court reversed an agency decision on due process grounds. The circumstances in that case, however, were far different than the circumstances in this case. In the *Consumer Advocate* case, the predecessor commission to the TRA accepted into the evidentiary record the report of an outside consultant without giving the parties the opportunity to cross-examine the consultant or challenge the conclusions of the report. In contrast, Exhibit 1 in this case the Authority's own statistical analysis of data supplied by BellSouth and entered into the record.

[30] Under the UAPA, the Directors are also entitled to receive assistance in the form of "memoranda or data" which is prepared by "personal assistants." Such communications which would be analogous to the work that a law clerk does for a judge, are expressly excluded from the evidentiary record. T.C.A. § 4-5-319(10).

BellSouth is presumably implying that Director Greer received the Exhibit from someone else in violation of the T.C.A. § 4-5-304(b), which prohibits *ex parte* communications between the Directors and persons outside the agency. Having no evidence of any such violation, BellSouth does not directly raise the issue of *ex parte* contact but the insinuation is clear.

Exhibit 1 is simply a mathematical analysis of data supplied by BellSouth to the Authority in response to a data request from the other parties in the case. The data shows – on a state by state basis – how well BellSouth performs when the company receives a request from a competing carrier for various services and functions. Since the whole purpose of this proceeding is to decide whether BellSouth's systems operate the same, or approximately the same, in Tennessee as in other states, this data is obviously very relevant to that determination.

Exhibit 1, as prepared by Director Greer and adopted by the Authority, takes a portion of that data and analyzes it using various statistical methods. The purpose of the analysis, as explained at page 41 of the Order, is to determine whether the differences among the states are material. Using several well-recognized statistical comparisons, which are fully explained in the exhibit, the Authority concludes that, in fact, the data does indicate a wide variation between BellSouth's level of service to CLECs in Tennessee and the level of service provided in other states.

Despite the shrill tone of BellSouth's Motion, there is nothing remotely illegal or improper about a state agency using its "technical competence and specialized knowledge" to analyze the evidentiary record.[31] As previously discussed, the UAPA and court decisions interpreting the Act have explicitly recognized that the TRA "must be able to draw on its own

[31] *C.F. Industries, supra*, 599 S.W. 2d at 543.

internal resources of knowledge and experience" in addition to the evidence presented by the parties.[32] The Tennessee Supreme Court explained "[w]e must presume that the members of the commission itself, with their supporting staff, have in their grasp practical knowledge in the field of utilities regulation not possessed by either the courts or laymen in general."[33] In other words, whether or not the parties to the case presented a statistical analysis of BellSouth's data, it is hardly inappropriate, or even surprising, that the Authority itself conducted such an analysis.[34]

Regarding the substance of Exhibit 1, BellSouth complains that the Authority's analysis is flawed. Again, BellSouth's argument has no merit. The purpose of the Authority's analysis was to determine whether BellSouth's flow through performance was substantially the same from one state to another.[35] A cursory review of the first page of the Authority's analysis shows that BellSouth's flow through rates have varied substantially from state-to-state. While there may be more than one reasonable way to conduct an analysis of flow through rates, BellSouth has not demonstrated that the Authority's approach was unreasonable or that another approach

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[32] *Id.*, at 543 (citations omitted).

[33] *Id.* (citations omitted).

[34] Indeed, it is ironic if not disingenuous that BellSouth now complains about its inability to cross-examine or challenge the Authority's analysis of BellSouth's state-specific flow through data because the Authority sanctioned BellSouth for failing to provide that data in a timely manner in the first place. If BellSouth had produced the flow through data before the hearing, then perhaps the Authority would not have had to conduct its own analysis. Since BellSouth did not produce the data until nearly three months after the hearing, the Authority had little choice but to conduct its own analysis. BellSouth should not now be allowed to complain about a situation that BellSouth itself created.

[35] *Regionality Order, at 41* (explaining that a "majority of the Directors determined that this analysis revealed statistically significant disparities in Local Number Portability Percent Flow Through data across BellSouth's nine-state region.")

would produce a materially different result. Indeed, BellSouth has admitted its flow through rates can and do vary substantially from state-to-state.[36]

The heart of BellSouth's complaint is its position that state-to-state performance variances are irrelevant to regionality.[37] The Authority, however, correctly concluded otherwise. As explained above, it is simply nonsensical to assert that state-to-state performance differences are irrelevant to regionality when the only purpose of a regionality determination is to justify the use of out-of-state performance data or test results in a state like Tennessee.

In sum, the Authority was simply doing its job by applying the "agency's member's experience, technical competence and specialized knowledge" to the evidentiary record to produce the subject analysis.[38] There has been no violation of BellSouth's due process rights and certainly no basis for the implied attack on former Director Greer. Moreover, BellSouth's mere displeasure or disagreement with the Authority's analysis is not proper grounds for a reconsideration or rehearing of the matter. Accordingly, the Authority should deny BellSouth's Motion.

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[36] *BellSouth's Post Hearing Brief, at 29; see Regionality Order at 28.*

[37] *BellSouth Motion at 17.*

[38] *TCA. § 4-5-314(d).*

C. The Authority Properly Found that the PWC Attestation Was Seriously Flawed and Lacked Independence

In its Regionality Order, the Authority found that the PWC attestation was seriously flawed and lacked independence.[39] The Authority reached that finding after watching and hearing PWC's Mr. Lattimore testify for several hours in response to cross-examination by the Directors, the Authority staff, and the CLECs. The Authority, moreover, reviewed the legal briefs and proposed findings of fact/conclusions of law submitted by the parties that addressed, among other things, the PWC attestation. In its briefs, the CLECs cited to ample evidence that supports the Authority's findings. Moreover, recent events in the accounting industry indicate that questioning the independence and credibility of firms like PWC is warranted and should not be taken for granted. On July 17, 2002, for example, PWC paid $5 million to the Security and Exchange Commission to settle charges that PWC violated independence rules.[40]

On a Motion for Reconsideration, the witness credibility assessments and the weight afforded oral testimony by the previous slate of Directors should not be second-guessed. It is well established in Tennessee case law that considerable deference must be accorded to the conclusions of the trier-of-fact regarding witness credibility and the weight of oral testimony:

> Where the trial judge has seen and heard witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because it is the trial court which had the

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[39] *Regionality Order, at 42.*

[40] *See* http://www.sec.gov/news/press/2002-105.htm *(SEC Press Released entitled "PricewaterhouseCoopers Settles SEC Auditor Independence Case).*

> opportunity to observe witnesses' demeanor and to hear the in-court testimony.[41]

Here, BellSouth is essentially requesting that the new slate of Directors reject the judgment exercised by the former slate of Directors. Such a request is contrary to relevant Tennessee precedent and should be denied.

BellSouth also argues that the Authority committed a material error of fact because it reached a different conclusion than the FCC regarding the PWC attestation. The mere fact that the FCC may have found PWC's attestation to be credible and reliable does not render the Authority's determination erroneous. As the Regionality Order indicates, the Authority considered the FCC's Georgia/Louisiana Order on the issue of regionality, but disagreed with their conclusion. Unlike the FCC, the Authority had the benefit of four days of live testimony that focused exclusively on the issue of regionality. Unlike the FCC, the Authority cross-examined Mr. Lattimore on his attestation. Unlike the FCC, the Authority had flow through performance data provided by BellSouth that contradicted PWC's conclusions. Based on the record before it, the Authority correctly concluded that the PWC attestation was flawed and lacked independence.

CONCLUSION

After a four-day hearing and extensive briefings by the parties, the Authority held that BellSouth did not establish that its OSS were regional. The Authority decision was well-grounded both in the facts and in the law. In its Motion for Reconsideration, BellSouth simply

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[41] *Coker v. Beverly Enterprises Tennessee, Inc.*, Docket No. M2000-01630-WC-R3-CV, 2002 Tenn. LEXIS 424, at 3 (June 25, 2002) *citing Long v. Tri-Con Ind., Ltd.*, 996 S.W.2d 173, 177 (Tenn. 1999).

rehashes old arguments that the Authority had previously considered and rejected. BellSouth's disagreement with the Authority's decision, however, is not proper grounds for reconsideration. Accordingly, the Authority should deny BellSouth's Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 19th day of July, 2002.

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