Jim Lamoureux
Senior Attorney
Law and Government Affairs
Southern Region
jlamoureux@att.com

Promenade 1
1200 Peachtree Street N.E.
Atlanta, GA 30309
404 810 4196
FAX: 404 810 5901

May 2, 2001

By Hand

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *AT&T's Communications of the South Central States and TCG MidSouth, Inc. Petition for Structural Separation of BellSouth Telecommunications, Inc..*

Docket No. 01-00405

Dear Mr. Waddell:

Enclosed please find the original and thirteen (13) copies of AT&T's Petition for Structural Separation of BellSouth Telecommunications, Inc.

If you have questions, please call me.

Sincerely,

Jim Lamoureux

Encls.

cc: Guy Hicks

BEFORE THE
TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

Petition of AT&T Communications of the South Central States, Inc., and TCG MidSouth Inc for Structural Separation of BellSouth Telecommunications, Inc.	))))	Docket No. 01-00405

PETITION OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC., THE COMPETITIVE TELECOMUNICATIONS ASSOCIATION, AND TCG MIDSOUTH INC FOR STRUCTURAL SEPARATION OF BELLSOUTH TELECOMMUNICATIONS, INC.

AT&T Communications of the South Central States, Inc., TCG MidSouth Inc. (collectively, "AT&T"), and the Competitive Telecommunications Association ("CompTel")(collectively, "Petitioners") hereby petition the Tennessee Regulatory Authority ("TRA" or "Authority") to convene a contested case to investigate requiring the structural separation of BellSouth Telecommunications, Inc. ("BellSouth") into distinct wholesale and retail corporate subsidiaries; for leave to intervene therein; and to enter an order requiring structural separation.[1]

INTRODUCTION

On February 8, 1996, the Telecommunications of Act of 1996 (the "Act") was signed into law. The Act was intended to open all telecommunications markets to competition, including local telephone markets. That competition, in turn, was intended to bring benefits to consumers, including a wider selection of services and providers and faster access to technology. Similarly,

[1] AT&T has been given permission to file this Petition on behalf of all Petitioners.

with the passage of the 1995 Telecommunications Act of Tennessee ("Tennessee Act"), the General Assembly declared the policy of Tennessee "to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications markets." T.C.A. § 65-4-123. Now, more than five years after passage of the federal Act and the Tennessee Act, the promise of local telephone competition remains largely unfulfilled in Tennessee.

BellSouth is by far the largest incumbent local exchange carrier ("ILEC") in Tennessee, and still controls the vast majority of the access lines in its service territory. Although many competitive local exchange companies ("CLECs") are certificated in Tennessee as competing telecommunications services providers, CLECs have been unable to make any meaningful inroads into BellSouth's monopoly markets. As a result, Tennesseans have not yet obtained the benefits of having the choices for local telephone services they were promised more than five years ago.

The primary impediments to removing BellSouth's monopoly control of local markets are structural. BellSouth has two contradictory roles: (1) operator of the local telephone network that virtually all CLECs rely upon (in some form or fashion) to provide their own local telephone service; and (2) the principal competitor of those very same CLECs for the very same retail customers. This structure creates conflicting incentives and an inherent conflict of interest for virtually all of BellSouth's operations. Indeed, the last five years have shown that whatever legal incentives BellSouth has to fulfill its obligations to open its network, it has a stronger incentive to preserve its local monopoly and to prevent its retail competitors from succeeding in capturing local market share.

BellSouth's control of the local market and the impact of that control on the development of local telephone competition in Tennessee has been a longstanding public policy concern of this Authority. However, it is now evident that current rules, regulations, and processes cannot overcome the inherent conflicts driving BellSouth's actions. Individual regulatory initiatives cannot resolve a problem that is fundamentally structural in nature. Instead, action must be taken to eliminate BellSouth's conflict of interest by establishing a corporate structure that would separate BellSouth's retail and wholesale activities into two separate subsidiaries. Specifically, this Petition requests that the Authority order the establishment of a retail company with independent management that would interact with the wholesale company on the same arm's length, non-discriminatory basis it would with any other competitor.

The time for the Authority to act is running short. This is a critical time for local telephone competition, as more and more CLECs are unable to compete with BellSouth. At the same time, BellSouth continues to reap tremendous profits from its local telephone operations.[2] If local telephone markets are not opened to competition soon, it may be too late for competition ever to develop. This will mean not only the continued monopolization of traditional local telephone services, but also the more serious prospect of the monopolization of the next generation of advanced telecommunications services, because these services are also largely

[2] BellSouth reported an earnings per share increase from 55 cents in the fourth quarter of 1999 to 59 cents in the fourth quarter of 2000. Additionally, BellSouth reported earnings per share in 2000 of $2.23, compared with $1.80 in 1999. More recently, BellSouth reported a 10.5% increase in 1st quarter revenues from 2000 to 2001. At the end of the 1st quarter 2001, BellSouth continues to forecast earnings per share growth of 7-9%. BellSouth grew its local service revenues in 2000 on a GAAP basis by 3.4%. While CLECs struggle to gain each customer, BellSouth increased its total equivalent access lines in service 25.3% from 1999 to 2000. It is particularly telling that while CLEC DSL carriers struggle and fail, BellSouth reports beating its own targets for DSL deployment. In the 4th Quarter 2000, BellSouth added 81,000 DSL customers, an increase of 60.4% in three months, and in the 1st quarter of 2001, BellSouth added another 88,000 new DSL customers. At the end of the 1st quarter 2001, BellSouth reported a total of 303,000 DSL customers.

dependent upon access to BellSouth's network. In order to fulfill the Authority's legislative mandate to promote competition in Tennessee, Petitioners respectfully request that the Authority order BellSouth to structurally separate into distinct wholesale and retail operations.

PARTIES

AT&T Corp. is a corporation organized and formed under the laws of the State of Delaware, having an office at 1200 Peachtree Street, N.E., Atlanta, Georgia 30309. AT&T Corp. is the parent corporation of AT&T Communications of the South Central States, Inc. AT&T is authorized to do business and is doing business in Tennessee, operating as an interexchange carrier ("IXC") under a certificate of public convenience and necessity issued by the Tennessee Public Service Commission on December 30, 1983. AT&T is also the holder of a certificate of public convenience and necessity as a competing telecommunications service provider issued by an order entered by the Tennessee Public Service Commission on October 13, 1995.

AT&T Corp. acquired Teleport Communications Group, Inc., the parent company of TCG MidSouth Inc., effective July 23, 1998. TCG is a holder of a certificate of public convenience and necessity as a competing telecommunications service provider issued by an order of the Tennessee Regulatory Authority on July 14, 1997. AT&T is a "public utility," a "telecommunications service provider," and a "competing telecommunications service provider," as defined in T.C.A. §§ 65-4-101(a), (d), and (e).

Based in Washington, D.C., CompTel is the premier trade association representing the interests of the competitive communications industry. The association serves U.S. and international communications firms and their suppliers who offer a variety of local, domestic and international long-distance, Internet, voice, data and wireless services. Founded in 1981,

CompTel's members include global and national firms, regional carriers and emerging local competitive companies, including major CLECs.

The legal rights, duties, and other legal interests of AT&T and the members of CompTel will be substantially affected by decisions and orders made by the Authority in this proceeding. The interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing Petitioners to intervene. Therefore, pursuant to T.C.A. §4-5-310, Petitioners should be given leave to intervene.

BellSouth Telecommunications, Inc. is a wholly owned subsidiary of BellSouth Corporation. BellSouth Corporation is organized and formed under the laws of the State of Georgia, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375. BellSouth Telecommunications, Inc. provides local exchange and other services within its franchised areas in Tennessee. BellSouth is a "Bell operating company" ("BOC") and an "incumbent local exchange carrier" ("ILEC") under §§ 153(35) and 251(h) of the Act. BellSouth is also a "public utility," a "telecommunications service provider," and an "incumbent local exchange telephone company" as defined in T.C.A. §§ 65-4-101(a), (c) and (d).

JURISDICTION

The TRA has jurisdiction to convene a contested case and to consider this Petition pursuant to Titles 4 and 65 and of the Tennessee Code. T.CA. § 65-4-104 confers upon the TRA broad authority to regulate telecommunications carriers and their activities. It provides that the TRA has "general supervisory and regulatory power, jurisdiction and control over all public utilities, and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter" T.C.A. § 65-4-104. T.C.A. § 65-4-117 provides the Authority with the power to "[i] nvestigate, upon its own

initiative or upon complaint in writing, *any matter concerning any public utility* as defined in § 65-4-101." (Emphasis added.) T.C.A. § 65-5-210 also provides the Authority with jurisdiction to "investigate, hear, and enter appropriate orders to resolve *all contested issues of fact or law arising out of the application of Acts 1995, ch. 408.*" (Emphasis added.)

Among its specific duties, the Authority is required to:

> adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.

T.C.A. § 65-5-208(c). Similarly, T.C.A. § 65-4-115 prohibits public utilities from adopting "unjust, unreasonable, unduly preferential or discriminatory" practices, and 65-4-122(c) prohibits public utilities from giving "an undue or unreasonable preference or advantage to any particular person or locality, or any particular description of traffic or service" and from subjecting "any particular person, company, firm, corporation, or locality, or any particular description of traffic or service to any unreasonable prejudice or disadvantage." Pursuant to T.C.A. § 65-1-123, it is the duty of the Authority to enforce these provisions.

In 1995, the General Assembly issued a legislative mandate to the Authority "to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications markets." T.C.A. § 65-4-123. Accordingly, T.C.A. § 65-4-124(a) requires all telecommunications service providers to "provide non-discriminatory interconnection to their public networks under reasonable terms and conditions," and "to the extent that it is technically and financially feasible,

to be provided desired features, functions, and services promptly, and on an unbundled and non-discriminatory basis from all other telecommunications services providers."[3]

T.C.A. § 65-4-106 specifically provides that Chapter 4 shall be given a "liberal construction, and *any doubt* as to the existence or the extent of a power conferred on the Authority by this chapter or chapters 1, 3 and 5 of this title *shall be resolved in favor of the existence of the power*, to the end that the Authority may effectively govern and control the public utilities placed under its jurisdiction by this chapter." (Emphasis Added.) T.C.A. § 65-4-106 is a specific directive from the General Assembly to construe Chapter 4 in favor of the powers of the Authority. *Breeden v. Southern Bell Tel. & Tel. Co.*, 285 S.W.2d 346 (1955). Accordingly, a liberal, rather than narrow construction of the powers of the Authority is required. *Briley v. Cumberland Water Co.*, 215 Tenn. 389 S.W.2d 278 (1965). In short, the Authority has "practically plenary authority over the utilities within its jurisdiction." *Tennessee Cable Television Assoc., et. al. v. Tennessee Public Svc. Comm'n*, 844 S.W.2d 151, 160 (Tenn. App. 1992).

BACKGROUND

The pro-competitive mandates of the Tennessee Act and the federal Act remain as unfulfilled today as they where when passed in 1995 and 1996. Major obstacles still remain to

[3] The federal Act specifically contemplates that state utility commissions will take independent action under state authority consistent with the pro-competitive policies of the Act. *See, e.g.*, Act § 253 (b) (states maintain the ability "to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.") Additionally, § 261 of the Act provides, "[n]othing in this part precludes a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the Commission's regulations to implement this part." Furthermore, § 601 (c) of the Act provides that the Act and the amendments made by the Act "shall not be construed to modify, impair, or supercede. . . State. . . law unless expressly so provided in such Act or amendments."

the widespread development of competition. In particular, there are at least three critical barriers to local telephone competition, which result from the inherent conflict of interest under which BellSouth operates. These are: (1) discriminatory access to operations support systems ("OSS"); (2) discriminatory provisioning of unbundled network elements and other facilities and services; and (3) anti-competitive retail programs. All of these barriers are natural outgrowths of the inherent conflict of interest driving BellSouth.

The fundamental problem in OSS parity is that BellSouth uses internal, well-established and mature OSS to provide services to its own customers, while BellSouth requires competitors to use new, fragile OSS developed by BellSouth for use by its competitors. CLECs using BellSouth's OSS must wait much longer than BellSouth's retail operations to obtain access to BellSouth's network and to provide local telephone services, and their customers are subjected to confusion, outages, and errors. This is a significant barrier to competition:

> Competing carriers must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service for their customers, to maintain and repair network facilities, and to bill customers. . . . [W]ithout nondiscriminatory access to the BOC's OSS, a competing carrier 'will be severely disadvantaged, if not precluded altogether, from fairly competing' in the local exchange market.

SBC Kansas-Oklahoma Section 271 Order, Joint Application by SBC Communications, Inc. et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order at ¶ 104, CC Docket No. 00-217, FCC No. 01-29, (Rel. January 22, 2001) (quoting *Bell Atlantic New York 271 Order*). CLECs do not have access to the same OSS that BellSouth uses to provide service to its customers, a situation that would be remedied by structural separation.

This disparity will not be voluntarily remedied by BellSouth without forceful action by the Authority. BellSouth simply has not devoted sufficient technical and related resources

necessary to develop OSS that provide parity to CLECs, and it has little incentive to do so. Rather, BellSouth's strategy has been to devote minimal resources to the development of OSS – just enough, it hopes, to comply with any requirements imposed by the Authority and other commissions and to secure approval of a Section 271 application before the FCC. Most importantly, however, BellSouth determines and controls the timetable for any OSS improvement, development and implementation.

And the current OSS problems threaten to be just the tip of the iceberg. In the future, OSS discrimination will certainly be even more subtle and severe. For instance, BellSouth need only provide a few untimely, inaccurate or incomplete bills to CLECs in order to enhance its own competitive position. Being in the local business itself, BellSouth is aware that billing errors, perhaps more than any other single aspect of customer service, can easily sabotage competitors' efforts to recruit and retain local customers. Structural separation would provide a remedy for this serious competitive impediment: if BellSouth had to use the same OSS to serve its customers as that which it provides to CLECs, not only would BellSouth lose the competitive advantage it gains from provision of substandard OSS, but in the longer term, OSS would improve for all providers.

A second critical obstacle has been BellSouth's unwillingness to provide UNEs and other facilities and services in the manner requested by CLECs and on the same terms and conditions as BellSouth provisions its own retail services. In virtually every proceeding since the Act was passed, BellSouth has attempted to limit CLECs to either buying discrete UNEs or reselling BellSouth's retail services, and thus succeeded at forestalling any serious challenge to its

monopoly over local telephone service in Tennessee and all other states.[4] Moreover, as the TRA is well aware, CLECs depend on provisioning of other items from BellSouth, including number portability and access to certain databases. There are a myriad of such items, each of which BellSouth controls and can use to forestall competition. BellSouth's failure to provision UNE-P and UNE loops in the same manner in which it serves its own retail customers has been the subject of numerous arbitrations, complaints, and three rejections by the FCC and other state commissions of BellSouth's 271 applications.[5]

More fundamentally, BellSouth is continuing its discriminatory provisioning approach with respect to advanced services such as xDSL. Even after definitive direction from the FCC, BellSouth continues to refuse to permit line splitting and is not taking any active steps to ensure that CLEC customers served by UNE-P can receive xDSL service in the manner permitted by the Act and specifically required by the FCC. Again, structural separation would eliminate this obstacle to competition, because every provider – including BellSouth – would serve customers through the same efficient methods.

---

[4] The ability of CLECs to use combinations of UNEs to provide local telephone service is "integral to achieving Congress' objective of promoting competition in the local telecommunications markets." *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*, Memorandum Opinion and Order at ¶ 230, CC Docket No. 99-295, FCC 99-404, (Rel. December 22, 1999) ("Bell Atlantic New York 271 Order"). The Consumer Federation of America similarly has concluded that "the ability to rent the combined set of wires and connections from the customer premise to the central office is critical to allowing competitors entry into the market." *Florida Consumers Need Real Local Phone Competition. Fair Access to Monopoly Wires is the Key*, Mark Cooper, Director of Research, Consumer Federation of America, at 9 (Jan. 2001).

[5] Most recently, BellSouth argued that unless the discrete elements that comprise a UNE combination are physically combined at the time of purchase ***and*** are being used by BellSouth to provide service to the specific customer the CLEC wishes to serve, BellSouth will not provide UNEs in combined form to allow CLECs to provide second lines, to serve new customer locations, or to provide services in addition to those currently being provided by BellSouth. This is the case even though BellSouth routinely and ordinarily uses those very same UNEs in combined form in order to provide those very same services to its own customers.

A third, and equally important obstacle relates to anti-competitive retail programs. BellSouth has a pattern of thwarting competition by offering attractive long-term pricing arrangements to high value customers, before they are lost to the competitors, and also with generous "win back" offers if any customers are lost to competitors. Additionally, BellSouth has every incentive to share customer information across its various organizations, such that when a competitor places an order with BellSouth to switch a customer, the customer receives a letter or call seeking to have them "return to BellSouth." Only if BellSouth is divided into two companies—both of which must deal with one another at arm's length—will the incentive be reduced for BellSouth to hinder competition through CSAs and other programs. Likewise, the incentive for BellSouth to internally share "win back" information would be eliminated.

To date, state commissions and the FCC have addressed these and other issues piecemeal, as they arise. Indeed, in arbitrations, complaints, and other proceedings, the Authority has endeavored to address such issues. The sheer number and repetitiveness of arbitrations, complaints and other proceedings during the past five years in Tennessee, however, should alone attest to the ultimate futility of this approach. Piecemeal resolution of issues under the "divide and conquer" theory of regulatory compliance allows BellSouth to throw its regulatory resources and attendant policy justifications at every proceeding that arises. The only way to eliminate these obstacles in a comprehensive manner, is to require BellSouth's retail arm to be provided with the same prices, terms and conditions, and access to network facilities as are provided to all other CLECs, and to remove the inherent conflict of interest that comes with being both a wholesale provider and retail competitor at the same time.

A structural solution is required for what is fundamentally a structural problem.[6] That local competition has been unable to overcome these obstacles is confirmed by the relevant evidence. The most recent market share data from the FCC shows that, five years after the Act, CLECs serve only 6.7 percent of local telephone lines. *Local Telephone Competition* (December 2000). Moreover, according to the FCC, about half of the lines served by competitive LECs are resold lines, *id.*, a strategy which many CLECs have announced they are abandoning.

Perhaps most telling about the state of competition is the abandonment by the ILECs of their own efforts to compete with one another. On March 3, 2001, SBC announced that it was scaling back plans to offer telecommunications services in 30 markets outside its traditional service areas in the Midwest and Southwest. *See SBC Communications to Scale Back Plan to Expand Telecom Service Offerings,* The Philadelphia Enquirer (Mar. 3, 2001); *Bells are Failing to Compete as They Promised,* Network World, (March 05, 2001). Ironically, while BellSouth had originally trumpeted SBC's plans as proof of competition, BellSouth "declined to comment" on SBC's most recent announcement scaling back those plans. *SBC Retreats from Atlanta,* Atlanta Journal-Constitution (Mar. 3, 2001). If the ILECs cannot overcome the barriers to local competition, it requires little imagination to predict that CLECs will be unable to do so without some significant alteration in the future landscape.

---

[6] It is not the intention of Petitioners that the Authority's consideration of structural incentives substitute for BellSouth's obligations under Section 271 of the federal Act. The TRA is well aware of the very real disagreements that will surface in any Section 271 review concerning BellSouth's behavior and performance. Petitioners' support for structural review transcends that process. A structurally realigned BellSouth, however, would be better positioned to satisfy the requirements of Section 271, because its own self-interest would promote compliance. The need for correct structural incentives, moreover, grows even *larger* after Section 271 relief has been granted and BellSouth is able to then leverage its dominance more freely. Consequently, the need for a structural investigation stands on its own merits, irrespective of the Authority's review under Section 271.

THE CASE FOR STRUCTURAL SEPARATION

Structural separation means that BellSouth would establish a retail affiliate which would provide finished services to consumers and have the customer relationship, just as any other CLEC, and BellSouth would establish a separate wholesale affiliate which would continue to own and operate the network facilities necessary to provide local telephone services in Tennessee. Thus, in order to provide finished retail services, the retail affiliate would have to negotiate an interconnection agreement with the wholesale affiliate, pay cost-based UNE rates to the wholesale affiliate, and access that affiliate's OSS, just like every other CLEC.

True structural separation requires more than a mere accounting gimmick. Through a number of mechanisms, structural separation, properly done, would ensure that the newly separate affiliates are truly separate, so that regulators, as well as competitors, can identify the rates, terms, and conditions on which services will be available to all potential purchasers. Such separate corporate affiliates would, for example, maintain separate books, records, and accounts from the wholesale arm, maintain separate facilities, and deal at arms length, in writing, with the wholesale arm.

The Authority should use its broad and specific authority to order such a corporate structure whereby BellSouth would separate completely its retail and wholesale activities. A retail service company ("BellSouth Retail Co.") would be established that is separate from the current local network operations. All retail local and any long distance telecommunications services would be housed in Retail Co., while the wholesale company ("BellSouth Wholesale Co.") would manage the local network and sell access to it on a "carrier to carrier" basis to all retailers, including BellSouth Retail Co., interfacing with every retail service provider on the same basis and using the same personnel and systems. BellSouth Retail Co. would have to pay

the same price for UNEs as all other CLECs. The separation of BellSouth Retail Co. from BellSouth Wholesale Co. would be complete, other than sharing the same parent company. BellSouth Retail Co. and BellSouth Wholesale Co. (or any of their affiliates) would not share officers, directors, personnel, equipment, buildings, services or other resources and would interact in writing.

The role of BellSouth Retail Co. would be to offer all the end-user services which compete with CLECs. Thus, the BellSouth Retail Co. could offer any retail service to any end user. BellSouth Retail Co. would interface with BellSouth Wholesale Co. in precisely the same manner that other CLECs do and could only provide services by negotiating an interconnection agreement at arm's length with BellSouth Wholesale Co. BellSouth Retail Co. would need to use the same OSS interfaces used by CLECs, and would purchase wholesale inputs from BellSouth Wholesale Co. at the same rates, terms and conditions as other CLECs. Fundamentally, BellSouth Wholesale Co. would not be permitted to develop or offer any interfaces or OSS equipment to BellSouth Retail Co. which BellSouth Wholesale Co. also does not make available to other CLECs.

Structural separation also would require the adoption of a Code of Conduct for both BellSouth Wholesale Co. and BellSouth Retail Co. to establish a higher degree of transparency in the wholesale-retail relationship. The Authority could adopt a number of different requirements as part of such a Code of Conduct, such as banning discrimination and cross-subsidization, requiring that BellSouth Wholesale Co. not provide information to its retail affiliate without simultaneously sharing information with its retail rivals, requiring that the wholesale arm and retail affiliate maintain separate buildings and separate employees, barring the wholesale arm from providing operations, installation, and maintenance for the retail

affiliate, and barring the wholesale arm from making misrepresentations about the relative quality of the retail affiliate's repair or provisioning service. The Authority also should consider including in the Code of Conduct innovative rules concerning capital structure that would ensure that BellSouth's retail management has fiduciary obligations to shareholders other than those that also own the wholesale company. The Code of Conduct also should allow for audits of the relationships and transactions between BellSouth Wholesale Co. and BellSouth Retail Co. to ensure compliance with the requirements of structural separation.

BellSouth Retail Co. would have to negotiate at arm's length an interconnection agreement with the wholesale affiliate just like other CLECs presently do with BellSouth. To the extent that the retail arm negotiates beneficial terms, under the FCC's "pick and choose" rules, BellSouth Wholesale Co. would be required to give those very same terms to CLECs. By forcing the retail and wholesale units to deal at arm's length, structural separation would assist the Authority in detecting discrimination by making it easier to benchmark the way in which the wholesale unit provisions UNEs. This would be helpful in developing performance measurements, benchmarks, and financial penalties for failure to meet the same. Specifically, requirements that the separate affiliates use separate buildings and separate employees and interact in writing, and prohibitions against the wholesale arm providing operations, installation and maintenance for the retail arm, also would make it more difficult for the wholesale arm to favor the retail arm or to pass along information to the retail arm in a discriminatory manner.

In short, by reducing the underlying conflict of interest, structural separation would reduce or eliminate the incentives BellSouth now has to impede competition and thus reduce or eliminate the constant barrage of police actions required of the Authority now to maintain the piecemeal approach of getting BellSouth to comply with the federal Act and the Tennessee Act.

There should be no doubt: structural separation can and should be accomplished. The Authority should conclude that it is both appropriate and necessary to require structural separation for BellSouth's wholesale and retail arms. Such action must be taken to assure that true competition develops – for the benefit of competitors and consumers alike – before it is too late.

REQUESTED TRA ACTIONS

Petitioners respectfully request that the TRA take the following actions as a result of this Petition:

1. Convene a contested case to dispose of this proceeding;

2. Grant Petitioners leave to intervene in that contested case;

3. Investigate and order the structural separation of BellSouth into distinct retail and wholesale units. The Authority should consider the appropriate means and mechanisms (including imposition of a Code of Conduct) for accomplishing structural separation;

4. Issue a procedural order for the disposition of the case; and

5. Take such other and further actions as deemed appropriate by the TRA.

Respectfully submitted,

Jim Lamoureux
AT&T
1200 Peachtree St., N.E.
Atlanta, GA 30306
(404) 810 4196

Attorney for AT&T
Communications of the
South Central States, Inc.,
and TCG MidSouth Inc.

May 2, 2001