

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 8, 2003

IN RE:

**PETITION FOR APPROVAL OF COLLOCATION
AGREEMENT BETWEEN UNITED TELEPHONE-
SOUTHEAST, INC. AND MAXCESS, INC.**

)
)
)
)
)

**DOCKET NO.
02-01276**

ORDER APPROVING COLLOCATION AGREEMENT

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 27, 2003, to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the collocation agreement negotiated between United Telephone-Southeast, Inc. and Maxcess, Inc., filed on December 6, 2002. Collocation is one of the elements of interconnection included in 47 U.S.C. § 251, and as such collocation agreements require state approval pursuant to 47 U.S.C. § 252.

Based upon a review of the agreement, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104.
- 2) The agreement is in the public interest as it assists in providing consumers with alternative sources of telecommunications services within the service area of United Telephone-Southeast, Inc.

3) The agreement is not discriminatory to telecommunications service providers that are not parties thereto.

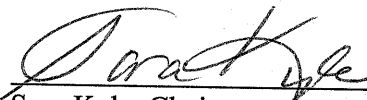
4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).¹ Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the agreement is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.

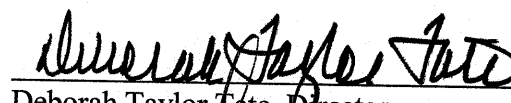
5) No person or entity has sought to intervene in this docket.

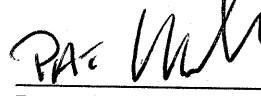
6) The agreement is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104.

IT IS THEREFORE ORDERED THAT:

The Petition is granted, and the collocation agreement negotiated between United Telephone-Southeast, Inc. and Maxcess, Inc. is approved and is subject to the review of the Authority as provided herein.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

¹ See 47 U.S.C. § 252(e)(2)(B).