

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT  
NASHVILLE, TENNESSEE**

**January 4, 2008**

<b>IN RE:</b>	)	
	)	
<b>PETITION FOR AUTHORITY APPROVAL OF TCG</b>	)	
<b>MIDSOUTH, INC.'S DIVESTITURE OF CERTAIN</b>	)	<b>DOCKET NO.</b>
<b>DARK FIBER FACILITIES IN TENNESSEE TO</b>	)	<b>07-00197</b>
<b>FULFILL MERGER COMMITMENTS</b>	)	

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Eddie Roberson, Director Pat Miller, and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on October 8, 2007 for consideration of *AT&T's Petition for Approval of TCG MidSouth, Inc.'s Divestiture of Certain Dark Fiber Facilities in Tennessee to Fulfill Merger Commitments* ("*Petition*") filed on August 30, 2007. In the *Petition*, TCG MidSouth, Inc. ("TCG") seeks Authority approval to divest certain fiber facilities located in Tennessee to Level 3 Communications, LLC ("Level 3").

TCG is a wholly-owned subsidiary of AT&T, Inc. ("AT&T"). TCG is authorized to provide facilities-based and resold intraLATA and interLATA telecommunications services pursuant to a certificate of public convenience and necessity granted by an Authority Order in Docket No. 97-00949.

Level 3 provides voice and data services to carriers and other business customers over its network. Level 3 is authorized to provide resold and facilities-based local exchange and

interexchange telecommunications services pursuant to certificates granted by Authority Order in Docket No. 98-00610, as amended in Docket No. 02-00230.

### **THE PETITION**

According to the *Petition*, on December 29, 2006 the Federal Communications Commission (“FCC”) approved the merger of AT&T, the parent company of TCG, and BellSouth Corporation. On December 28, 2006, AT&T made a series of voluntary commitments that were enforceable by the FCC including a commitment to sell to an unaffiliated third party an indefeasible right of use (“IRU”) to certain fiber strands. To effectuate the merger commitment related to the sale of IRUs, AT&T entered into an agreement with Level 3 which was reviewed and approved by the FCC on August 29, 2007. TCG now seeks the Authority’s approval to proceed with the divestiture.

### **FINDINGS AND CONCLUSIONS**

Tenn. Code Ann. § 65-4-112 (2004) applies to the transaction described in the *Petition* because it results in the transfer of assets from one Tennessee certificated carrier to another. Regarding the transfer of authority, Tenn. Code Ann. § 65-4-112 (2004) states:

No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of any other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

At the regularly scheduled Authority Conference held on October 8, 2007, the voting panel assigned to this docket considered the transfer of authority requested in the *Petition*. Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-112 (2004), the panel voted unanimously to approve the transfer.

**IT IS THEREFORE ORDERED THAT:**

The transfer of authority of certain dark fiber facilities of TCG MidSouth, Inc. to Level 3 Communications, LLC as described in *AT&T's Petition for Approval of TCG MidSouth, Inc.'s Divestiture of Certain Dark Fiber Facilities in Tennessee to Fulfill Merger Commitments* and discussed herein is approved.



Eddie Roberson, Chairman

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Pat Miller, Director<sup>1</sup>



Sara Kyle, Director

<sup>1</sup> Director Miller voted in agreement with the other directors but resigned his position as Director before the issuance of this order.