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September 9, 2008

VIA HAND DELIVERY

filed electronically in docket office on 09/09/08

Hon. Tre Hargett, Chairman
c/o Sharla Dillon,
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee Tariff to Increase Per Call Rate for Directory Assistance*
Docket No. 08-00076

Dear Chairman Hargett:

Enclosed for filing in the referenced docket are the original and four copies of AT&T Tennessee's Brief in Opposition to Consumer Advocate's Motion to Reconsider.

A copy has been provided to counsel of record.

Sincerely yours,

Guy M. Hicks

#650933

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee Tariff to Increase Per Call Rate for Directory Assistance*

Docket No. 08-00076

AT&T TENNESSEE'S BRIEF IN OPPOSITION TO CONSUMER ADVOCATE'S MOTION TO RECONSIDER

BellSouth Telecommunications, Inc. dba AT&T Tennessee ("AT&T") files this Brief in Opposition to the Motion to Reconsider filed on July 30, 2008 by the Consumer Advocate Division ("Consumer Advocate" or "CAD") and respectfully shows the Tennessee Regulatory Authority ("the Authority" or "TRA") as follows:

I. Overview and Introduction

Pursuant to TRA rules and statutes,[1] the TRA opened this docket for the purpose of considering a tariff filed by AT&T on May 12, 2008, and the Authority correctly determined that the tariff was lawful and appropriate to approve during its deliberations on May 19, 2008. On July 14, 2008, the TRA issued its Order denying the complaint and petition to intervene filed by the Consumer Advocate. The Consumer Advocate filed its Motion for Reconsideration on July 29, 2008. On

[1] As established by T.C.A. § 65-5-101 and TRA Rule 1220-1-2-.02, the filing of a tariff does not automatically trigger a contested case, nor is the TRA obligated to convene a contested case merely because a party seeks one. The decision whether convene a contested case or whether issues raised by the CAD may be considered in another docket is a matter of discretion for the Authority. The Tennessee Court of Appeals has recognized the Authority's discretion to so manage its resources, noting "[W]e are referred to no rule or statute which forbids the TRA from ordering that this issue should be heard in another docket, and thus cannot fault the TRA for doing so." *Consumer Advocate Div. v. Tenn. Regulatory Auth.*, 2002 Tenn. App. LEXIS 506 (Tenn. Ct. App. July 18, 2002).

August 18, 2008, the TRA issued its Order granting the Motion, for procedural purposes, and requesting additional briefs. The Authority will determine the merits of the CAD's Motion at a date to be determined in the future.

II. There is No Basis to Convene a Contested Case to Address Issues Not Raised by the Tariff.

The Consumer Advocate continues to insist that the docket should be converted to a contested case, including discovery, which, in the Consumer Advocate's words, would permit

> the Consumer Advocate the opportunity to develop a record supporting changes in the current directory assistance ("DA") tariff and practices of [AT&T] so that DA state policy may better serve the public.[2]

The CAD fails to note that the "tariffs and practices" to which it refers have been properly established by tariffs that have been approved by the Authority. These approved tariffs have the force of law.[3]

The Authority correctly declined to convene a contested case in relation to a routine tariff filing, which addressed a rate change expressly permitted by law and presented ***no other*** issues of "DA policy" or call allowances. The Authority's order declining to convene a contested case correctly applied the doctrine of ripeness, but, even if the CAD were correct that it raised issues that were ripe for review

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[2] Motion to Reconsider at 1.

[3] The Tennessee Court of Appeals has noted that "[t]he published tariffs of a common carrier are binding upon the carrier and its customers and have the ***effect of law***." *GBM Communications, Inc. v. United Inter-Mountain Tel. Co.*, 723 S.W.2d 109, 112 (Tenn. Ct. App. 1986) (emphasis added).

(which AT&T disputes[4]), the TRA's order is still a proper and well-reasoned exercise of the administrative discretion it has to manage its dockets and resources and to decide when and whether to convene a contested case.

III. There Is No New Evidence.

Finally, the voluminous attachment to the CAD's Motion to Reconsider provides no basis to grant the motion on the merits. The attachment, which consists of a presentation relating to the relationship between end user income and adoption of new technology, has no relevance whatsoever to the limited tariff at issue in this docket. If the CAD is attempting to present the attachment as "new evidence," then TRA Rule 1220-1-2-.20(1) requires the motion to set forth the reason that such evidence was not presented in the original proceeding. No such explanation is included in the CAD's motion. Moreover, the materials submitted appear to focus on the adoption or use of broadband technology, which the TRA is expressly prohibited from regulating pursuant to T.C.A. § 65-5-203.

The CAD's Motion for Reconsideration offers nothing new. There is no reason for the TRA to reverse course and change its ruling approving a rate increase clearly allowed under state law.

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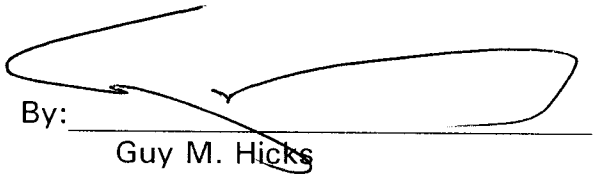
[4] The CAD's Motion for Reconsideration wrongly applies the doctrine of ripeness and argues that there is a justiciable controversy presented by the CAD's ongoing interest in whether DA call allowances are currently treated differently under current tariffs and law than call allowances were treated under "traditional" rate of return regulation ***that is no longer applicable to AT&T***. As the TRA correctly concluded, however, no such issues are relevant to the tariff filed in this docket. It is undisputed that the tariff filed in this docket did not seek to alter call allowances and that the rate change in the tariff was clearly permitted under the price regulation ***that is applicable to AT&T.*** The TRA correctly considered the doctrine of ripeness in declining to convene a contested case which would have been wasteful of its resources and duplicative of work in other on-going dockets.

For all of the foregoing reasons, the Motion to Reconsider the merits of the TRA Hearing Panel's Order of July 14, 2008 should be denied.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T TENNESSEE



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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2008, a copy of the foregoing document was served on the following, via the method indicated:

[x] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[x] Electronic

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