

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 6, 2010

IN RE:

BELLSOUTH TELECOMMUNICATIONS, INC. D/B/A
AT&T TENNESSEE PETITION TO EXTEND MARKET
REGULATION TO RATE GROUPS 1 AND 2

DOCKET NO.
10-00108

ORDER SETTING PROCEDURE FOR HEARING ON AUGUST 23, 2010
AND FOR FILING POSITION BRIEFS

This matter came before the Hearing Officer at a Status Conference held on August 5, 2010 for the purpose of discussing with the parties the *Joint Stipulation of the Consumer Advocate and AT&T Recommending the Parties File Position Briefs in Lieu of a Hearing* ("Joint Stipulation") filed on August 3, 2010 by BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T Tennessee") and the Consumer Advocate and Protection Division of the State of Tennessee Office of the Attorney General ("Consumer Advocate"). In attendance at the Status Conference were:

AT&T Tennessee – Joelle Phillips, Esq. and Guy M. Hicks, Esq., 333
Commerce Street, Suite 2101, Nashville, TN 37201-3300;

Consumer Advocate – Mary Leigh White, Esq. and Vance Broemel, Esq.,
Office of the Attorney General, Consumer Advocate and Protection Division,
P.O. Box 20207, Nashville, TN 37202-0207.

The parties summarized the *Joint Stipulation* as reflecting an agreement by AT&T Tennessee and the Consumer Advocate that this matter does not present an evidentiary dispute but instead requires a determination as to the differing positions of the parties with respect to an interpretation of Tenn. Code Ann. § 65-5-109(o). The Consumer Advocate acknowledged that

AT&T Tennessee has submitted sufficient evidence to meet the requirements of Tenn. Code Ann. § 65-5-109(o)(1) and (2).¹ Nevertheless, the Consumer Advocate argues that the granting of a petition filed pursuant to Tenn. Code Ann. § 65-5-109(o) is not mandatory and that the TRA can and should consider policy implications in acting on such a petition. AT&T Tennessee argues that once it has demonstrated that it has met the competitive standard in Tenn. Code Ann. § 65-5-109, its petition should be granted.

The parties have agreed that live testimony and cross-examination of witnesses is not necessary in this matter because the pre-filed testimony and documentation submitted by the parties reveal that the underlying facts are not in dispute. Therefore, the parties advocate the filing of Position Briefs as the means for presenting their respective positions to the Authority for determination of whether to grant the petition filed by AT&T Tennessee.

Based upon the *Joint Stipulation* and the comments of the parties during the Status Conference on August 5, 2010, the Hearing Officer made the following determinations:

1. The Hearing on the petition scheduled for Monday, August 9, 2010 is cancelled.
2. The panel hearing this case will convene a hearing during the Authority Conference on August 23, 2010 and will hear public comments at that time.

¹ Tenn. Code Ann. § 65-5-109(o)(1) and (2) state:

(1) Upon petition by a market-regulated provider, the authority may order that such services shall be subject to the limitations on jurisdiction in subsection (n) by showing that each exchange has at least two (2) nonaffiliated telecommunications providers that offer service to customers in each zone rate area of each exchange;

(2) When counting the number of providers for the purpose of evaluating the competition standard in subdivision (o)(1), cable television providers that offer telephone and broadband services to residential customers may be included. Nonaffiliated providers of wireless service may be included in the count of providers but shall only count as one (1) provider regardless of the number of wireless providers. Nonaffiliated providers of voice over Internet protocol service shall not be counted for the purpose of evaluating the competitive exemption for residential service, unless the carrier seeking exemption offers a data service capable of supporting voice over Internet protocol service and does not require the purchase of voice telephony products to buy the data service. At least one (1) provider must be facilities-based and currently serving residential customers;

3. While the panel will not be hearing testimony from the parties, the witnesses of the parties will be available to answer any questions the Directors may have during the Hearing.


4. Each party shall be prepared to provide a brief summary of its position for the benefit of the Directors and any members of the public in attendance. Each presentation shall be no longer than five (5) minutes.

5. Based upon the agreement of the parties, the date for filing Position Briefs is moved from Friday, August 13, 2010 to **Wednesday, August 11, 2010**, no later than 2:00 p.m. The parties will designate, no later than August 11, 2010, those filings, including pre-filed testimony and discovery responses, that will be included in the record for consideration by the panel.

6. The Authority will issue a Notice inviting public comment with respect to the petition and informing the public that the parties have agreed to rely upon the record of the proceeding and will not be offering live testimony during the hearing on August 23, 2010.

7. The panel may proceed to deliberate the merits of the petition following the Hearing on August 23, 2010.

IT IS SO ORDERED.


Director Eddie Roberson
Hearing Officer