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March 3, 1997

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201


Re: Tariff Filing by UTSE to Reflect Annual Price
Cap Adjustment, Tariff No. 96-201
Docket No. 96-01423

Dear Mr. Waddell:

Enclosed for filing in the above-styled matter are an original and thirteen (13) copies of the reply of AT&T Communications of the South Central States, Inc. to the motion filed by United Telephone-Southeast, Inc. to strike the testimony of Michael Harper.

Copies are being served on counsel for parties of record.

Yours very truly,


Val Sanford

VS/ka
Enclosures

cc: Guy M. Hicks, Esq.
L. Vincent Williams, Esq.
Richard M. Tettelbaum, Esq.
James B. Wright, Esq.
James P. Lamoureux, Esq.

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

**IN RE: TARIFF FILING BY UNITED TELEPHONE-SOUTHEAST, INC. TO
REFLECT ANNUAL PRICE CAP ADJUSTMENT (TARIFF NO. 96-
201)**

DOCKET NO.: 96-01423

**REPLY OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC. TO
MOTION OF UNITED TELEPHONE-SOUTHEAST, INC.
TO STRIKE TESTIMONY OF MICHAEL HARPER**

AT&T Communications of the South Central States, Inc. ("AT&T") respectfully requests the Tennessee Regulatory Authority ("TRA") deny the motion of United Telephone-Southeast, Inc. ("United") to strike the testimony of AT&T's witness G. Michael Harper in this proceeding.

While United is correct that Mr. Harper's testimony relates principally to the price United charges for switched access, United is incorrect that the subject of United's switched access prices is not relevant to this proceeding. The subject of the prices charged by United for access is relevant to this proceeding for two reasons: (1) United's price cap filing affects the rates paid by interexchange carriers for switched access, and (2) consideration of United's access prices in this proceeding is consistent with federal and Tennessee law.

As to the first reason, it is undisputed that United's price cap filing affects the prices AT&T and other interexchange carriers will pay for switched access in Tennessee. Although, as Mr. Parrot testifies, the only action initiated by United in this proceeding to revise its access rates affects a decrease in access charges, the overall effect of the filing is to increase United's

price for switched access. Moreover, even if United's filing did not alter its access prices, it would still affect the rates paid by interexchange carriers for switched access--by failing to reduce the price of access to the economic cost of providing access. Thus, it is clear that United's price cap filing affects the rates paid by interexchange carriers for switched access from United.

As to the second reason, both the Telecommunications Act of 1996 ("the Act") and Tennessee law constrain United's ability to set prices for switched access. The Act requires that incumbent local exchange carriers provide interconnection at cost-based rates. 47 U.S.C. § 252(d). Indeed, even Mr. Parrot apparently agrees that the Act's requirement that interconnection be priced based on the cost of interconnection applies to the prices charged for switched access. See, Parrot Rebuttal Testimony, at 12. United's only apparent disagreement with AT&T on this score concerns the proceeding in which the TRA should consider this issue and the method the TRA should use to determine cost-based rates. Id.

United believes the TRA should defer this issue to a subsequent universal service/access reform docket. Id. While AT&T does not disagree that it would be obviously appropriate to consider access issues in an access-specific proceeding, AT&T disagrees that it is therefore inappropriate to consider such issues in this proceeding. Even if United's price cap filing meets the numerical requirements of T.C.A. § 65-5-209, United does not have carte blanche to charge any price it desires for access. T.C.A. § 65-5-209(b) specifically requires that the rates charged by an incumbent local exchange carrier shall be "subject to the safeguards in § 65-5-208(c) and the non-discriminatory provisions of this title." Further, T.C.A. § 65-5-209(g) allows price regulated companies to set prices for interconnection services subject to "the requirements of §

65-5-208 and the non-discriminatory provisions of this title."¹ T.C.A. § 65-5-208(c) imposes on the TRA an obligation 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. §§ 65-4-122 and 65-5-204, the non-discrimination provisions referred to in 65-5-209, prohibit United from charging unreasonable, unjust, discriminatory, or preferential rates. Thus, even if United's price cap filing complies with the numerical requirements set forth in T.C.A. § 65-5-209, the rates contained in United's filing remain subject to T.C.A. §§ 65-5-208(c), 65-4-122, and 65-5-204. These provisions are all relevant to rates charged by United for switched access, since they all prohibit unreasonable, discriminatory, and anti-competitive rates.

Until United's rates for switched access are priced based on cost as required by the Act, they will continue to be unreasonable, discriminatory, and anti-competitive. It is, therefore, appropriate in this proceeding to consider the prices United proposes to charge in its price cap filing for switched access.²

AT&T, therefore, disagrees with United's assertion that AT&T is trying to expand the scope of this proceeding. Tennessee law provides that the scope of this proceeding may include

¹"'Interconnection services' means telecommunications services, including intrastate switched access service, that allows a telecommunications services provider to interconnect with the networks of all other telecommunications service providers." T.C.A. § 65-4-101(f). The provision concerning non-basic services, T.C.A. § 65-5-209(h), referenced by United in its Motion, also refers to "the non-discrimination provisions of this title . . . [and] any rules or orders issued by the authority pursuant to 65-5-208(c)[.]"

²The fact that United's prices for access were established by the TRA (or its predecessor, the TPSC) in prior proceedings is immaterial to this determination. T.C.A. §§ 65-5-208(c), 65-4-122, and 65-5-204 impose continuing obligations on United and the TRA.

the issues raised by AT&T. AT&T does not disagree that the TRA may convene another proceeding to consider these specific issues; however, this does not preclude the TRA from considering these issues in this proceeding and does not render Mr. Harper's testimony irrelevant to this proceeding. Therefore, AT&T respectfully requests that the TRA deny United's Motion to Strike.³



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³AT&T also respectfully requests that the TRA rule expeditiously on United's Motion. The hearing in this proceeding is scheduled for March 1. The only issues raised by AT&T in this proceeding are those addressed in Mr. Harper's testimony, and, if United's motion is granted, it would be fruitless for AT&T to attend the hearing.

CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that I have served a copy of the foregoing Reply of AT&T Communications of the South Central States, Inc. on counsel of record, as indicated below by depositing a copy of the same in the U.S. Mail, postage prepaid, this 3rd day of March, 1997:

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