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 **BELLSOUTH**

Guy M. Hicks  
General Counsel

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EXECUTIVE SECRETARY

April 9, 1997

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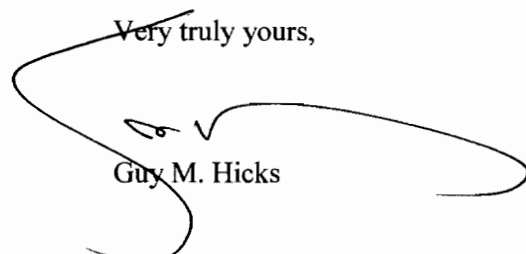
David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 To Reflect Annual Price Cap Adjustment*  
Docket No. 96-01423

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Motion to Strike the Consumer Advocate Division's "Brief" in the above referenced matter. A copy has been provided to counsel of record.

Very truly yours,

  
Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 To Reflect Annual  
Price Cap Adjustment*

Docket No. 96-01423

**BELLSOUTH TELECOMMUNICATIONS, INC.'S**  
**MOTION TO STRIKE THE CONSUMER ADVOCATE**  
**DIVISION'S "BRIEF"**

The Tennessee Regulatory Authority should strike both the thirty-nine page "Brief" filed by the Consumer Advocate Division ("CAD") on in this docket on April 1 and the seven-page Brief filed by the CAD on or about April 4. The CAD filed its first "Brief" eleven days after the deadline established by the Tennessee Regulatory Authority ("TRA"), blatantly disregarding the explicit directives of the TRA and basic principles of professional courtesy in the process. The CAD then inexplicably filed yet another "Brief" in this docket fourteen days after the deadline. The TRA should not condone the CAD's actions by accepting its "Briefs" under these circumstances.

**I. The CAD Disregarded the TRA's Filing Deadline**

At the March 11, 1997 hearing in this docket ("the hearing"), Chairman Greer ordered the parties to submit post-hearing briefs by noon on March 21, 1997. Both BellSouth and United did so. By contrast, the CAD did not file a brief by the 12:00 noon deadline on March 21, 1997.

Instead, several hours after the filing deadline had expired (and after BellSouth and United had filed their respective briefs), the CAD faxed a motion to the TRA seeking additional time for the CAD (but not for BellSouth or United) to file a brief. The CAD

did so without giving counsel for BellSouth or United any prior notice of the CAD's intention to request an extension of the filing deadline. Had the CAD done so, the parties could have either agreed to the request and filed a joint motion with the TRA or, in the event BellSouth or United would not agree to an extension, the CAD could have moved for additional time before the filing deadline had lapsed. In this way, all of the parties would have been treated the same. Instead, by filing its motion only after the deadline had lapsed and only after BellSouth and United had filed their briefs, the CAD is essentially asking the TRA to give BellSouth and United ten days to file briefs, while giving the CAD whatever time it needs to file its brief (which turned out to be 21 days).

The CAD has yet to provide any legitimate basis or explanation for its inability to adhere to the March 21 filing deadline established by the TRA for all the parties. The CAD's letter to the TRA's Executive Secretary dated March 21, 1997 attempts to justify its belated filing of its motion to extend time by stating "no signature was placed on the document until a notary could verify and affix a signature." According to BellSouth's files, however, the CAD has filed a Petition to Intervene, an Objection to Proposed Order, Discovery Requests, a Reply , an Objection to Proposed Order and Withdrawal, a Response in Opposition to Motion to Strike Testimony of Archie Hickerson, a Motion to Adopt Uniform Rules, a Notice of intent to use proprietary information, a Notice of Filing, a Response to Objection, and a Reply to Response of BST in this docket without attaching an affidavit and without having any signatures on these documents notarized. Thus, the only document to which the CAD apparently felt compelled to attach an

affidavit and notarized signature was its belated motion for an extension of time to file its brief.

The CAD's "Reply to Response of BellSouth" offers a different, and possibly inconsistent, excuse for having filed its motion after the deadline for filing briefs: "the Motion was in the routine possession of the Division's secretary for filing." All this says is that the CAD had the motion in its possession and did not file it on time. This does not -- and should not -- constitute a reason for allowing any party to ignore a filing deadline and then ask for more time to meet the deadline it has already ignored.

**II. The CAD Disregarded the TRA's Directive to File a Concise Document Addressing "One Specific Issue."**

At the hearing, Chairman Greer asked the parties to file post-hearing briefs "on one specific issue:" the legislative history addressing whether or not directory assistance is a basic service. Tr. at 260. BellSouth and United filed briefs which succinctly address this issue. The CAD, however, blatantly ignored the TRA's directive by belatedly filing a "brief" on the issue of "statutory construction." Among other things, the CAD accuses United of conduct "subject to civil and criminal suit" and then meanders through thirty-nine pages of accusations, the vast majority of which are unrelated to directory assistance. In fact, in the nine issues the CAD lists at pages 1-2 of its filing, the words "Directory Assistance" appear exactly once. The first direct reference to the legislative history in the CAD's "brief" on the issue of directory assistance appears on page 25. Thus, the vast majority of the CAD's filing is completely unrelated to the issue the parties had been directed to brief.

At the hearing, Chairman Greer also reminded the parties that "the word 'brief' is, in fact, brief. That does not mean a 100-page brief." Tr. at 277. With these statements in mind, BellSouth and United filed briefs of seven and ten pages, respectively. The CAD, however, used the additional eleven days it unilaterally granted itself to file its "brief" to churn out a thirty-nine page document. The CAD's rationalization that its filing could not be brief "since [United] and BellSouth have not clearly indicated which statutes allegedly are ambiguous," CAD's "Brief" at 1, conveniently ignores the fact that both United and BellSouth have shown that the statutes unambiguously define directory assistance as a non-basic service.

Three days after it belatedly filed its thirty-nine page "Brief," the CAD inexplicably filed yet another document purporting to address statutory construction. The CAD did not move the TRA for permission to file this additional document. Moreover, this additional document fails to address the fact that the CAD's representative testified before the Joint Committee on State and Local Government that the 1995 telecommunications legislation provided local exchange carriers like BellSouth and United "essentially unlimited" flexibility with regard to directory assistance. See Exhibit 1 and affidavit attached.

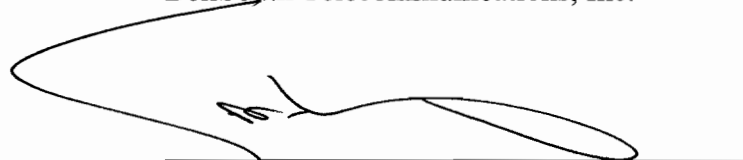
In short, the "Briefs" the CAD belatedly filed in this docket are nothing more than lengthy arguments of the CAD's case, rather than a discussion of the relevant legislative history. The CAD's blatant disregard of the TRA's instructions could not be more clear.

#### IV. Conclusion

No party appearing before the TRA should be allowed to ignore TRA directives, obtain additional time to comply with the directives it has already ignored, and gain an unfair advantage in so doing. Accordingly, the TRA should deny the CAD's motion for an extension of time and should strike the CAD's "Briefs" from the record.

Respectfully submitted,

BellSouth Telecommunications, Inc.



Guy M. Hicks  
Patrick W. Turner  
333 Commerce Street, Suite 2101  
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615/214-6301

#### CERTIFICATE OF SERVICE

I hereby certify that on April 9, 1997, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:

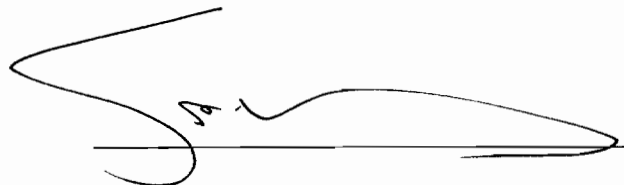
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Tennessee Regulatory Authority  
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Vincent Williams, Esquire  
Consumer Advocate Division  
426 Fifth Ave., N., 2nd Fl.  
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James B. Wright, Esquire  
United Telephone-SE  
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Wake Forest, NC 27587-5900

Henry Walker, Esquire  
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Val Sanford, Esquire  
Gullett, Sanford, et al.  
230 Fourth Ave., N., 3d Floor  
P. O. Box 198888  
Nashville, TN 37219-8888



# EXHIBIT 1

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 To Reflect Annual Price Cap Adjustment*

Docket No. 96-01423

AFFIDAVIT OF CAROLYN HANESWORTH IN SUPPORT OF  
BELLSOUTH TELECOMMUNICATIONS, INC.'S  
BRIEF REGARDING STATUTORY CONSTRUCTION  
OF T.C.A. § 65-5-208


STATE OF TENNESSEE  
COUNTY OF DAVIDSON

I, Carolyn Hanesworth, being duly sworn, hereby depose and say:

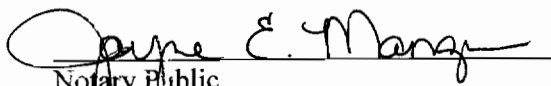
1. I am the Administrator in the Legal Department for BellSouth Telecommunications, Inc. in Tennessee.

2. I have accurately transcribed to the best of my ability the attached excerpt from the record of the proceedings before the Joint Committee on State and Local Government of the Tennessee Legislature held on April 18, 1995, beginning at 12:40 p.m. (Tape # 3, at 528 and following), attached hereto as Exhibit 2.

Further affiant saith not.

  
Carolyn Hanesworth

Sworn to and subscribed before me  
this 8<sup>th</sup> day of April, 1997.

  
Notary Public

My Commission Expires:

9/23/2000



Senator Cohen:

The Consumer Advocate.

Williams:

Vincent Williams, Consumer Advocate Division of the Attorney General's Office. I think that there have been some good questions that have been asked today and I think that there has been some good information provided today. It sometimes concerns me about hearings of this type when ... of course, these are sort of non-evidentiary hearings meaning no one is under oath about what they say, but all of us have a duty of course to be direct and accurate with the quest... and respond to the questions asked. I agree with Mr. Burcham that there is no forecast in earnings. Not only that -- I mean -- it appears that we differ a bit the PSC witness, Dr. Kline, in that a rate review would go forward when the statute ... the proposed provision of Section 10 clearly says that the rate review only goes forward if you meet certain tests. And the test is whether or not the PSC 3.01 is within the range. If it's within the range, the different ranges, then there is no earnings review. If it's outside the range, meaning above the range, then there is -- there can be an earnings review, and if it's below the range, the company asks. And what our concern is that the PSC 3.01 does not accurately determine what price this should be, number one. The number two, it doesn't accurately state what prices should be in the future, which is what we're talking about going from here to the year 2000. So what the PSC talks about is historic earnings, which allows people to claim expenses in one period that won't be the expenses there tomorrow or the next day. And that the earnings of the company and the rates that are being charged should be rates that recognize that these expenses don't exist. The ... There was some mention of the rule which we at the Consumer Advocate, and I believe, nearly every other company other than the incumbent local carriers objected to in the Commission. Nearly every carrier here, even the ones that changed sides here for this proceeding, objected to the Commission's rule, and they objected to it on the basis -- on some of the same bases (sic) that we have here and they objected to it because -- and we challenged the rule that the Commission did not have authority to mandate price increases without an evidentiary hearing, which they tried -- which apparently the rule was attempting to do. It gave an inflation increase to the companies without an evidentiary hearing. It set productivity factors without a single evidentiary hearing. Nobody made an evidentiary hearing of that. Nobody made an evidentiary hearing that the companies ought to be entitled to inflations (sic) by look-examining the costs. It was an attempt to do it by rule. I thought I might share with you a little bit about that process where everyone was meeting together. When I became Consumer Advocate, I was asked by one of the Commissioners hold a meeting and see if we could arrive at a negotiated settlement about the rule, with the rule. And what happened was the Consumer Advocate was put in a room with South Central Bell and said ... and we were advised that this was going to be the rule and you have to decide whether you're going to go along with it or not. And so we asked, where's everyone else? Where's AT&T? Where's

MCI? And where are these other parties? And those parties ... they weren't there because they didn't count. And so we objected to that rule. We objected to the proceeding, and we refused to go along with a situation where the Commission, an entity which was supposed to be making an investigation and making an informed decision based on the facts would promulgate that by rule. We also did it because they would ... that rule would be denying Tennessee consumers some of the very things that they contracted for in the FYI plan as Commissioner Hewlett indicated and that FYI plan was supposed to be effective to the year 2000. In 1991, they projected those expenses and they projected benefits from FYI to the year 2000. And so, what we are here to say, and ... we do not take a position on bills ... we're here to share with the General Assembly what the operation of the bills do when they are applied by people ... when they are applied by technical people who understand how those nuances go. One bill is a combination of insertions and omissions. As Commission Hewlett indicated there are (sic) some very particular and precise language about what basic service should be. And that was for a reason. And it excludes the ability of some communities to have video services. It excludes the ability of various communities to have different and new technologies. And so we were concerned about that aspect, and that narrow definition of universal service. We were concerned about the way that prices were granted increases. Now I've heard a lot of testimony about cap, and I think that the understanding needs to be clear that this is a cap of the aggregate revenues of the company, which .... I think there was some testimony that it was \$1.2 billion. And that any service can be capped up to the aggregate revenues of the company, up to billions of dollars. If they want to make some adjustment somewhere, they can ... A company can freeze out various services by making the cost of them too prohibitive for a consumer to have. They can make directory assistance so high that no one would use it. They can take away the rights of the elderly to ....

Senator Cohen:

Let me hear that again. They can make directory assistance so high that nobody would use it?

Williams:

Yes sir. Their flexibility is essentially unlimited. They can take .. they can ... they can charge call blocking -- that's the block of 900 numbers, for example. They can make ... If they decide ... If they can be reasonable, they can take call blocking and charge it so that no one would want to use call blocking. If they wanted to deal with the listings .... if someone wanted an unlisted number, they can make the price of the unlisted number so high that people won't want to use it. They are able to deter services through sheer pricing power when there is no effective alternative to the consumer. And so, competitive services we believe should be regulated -- I mean unregulated, and monopoly services, where the company is the only provider, should be regulated. And it should be regulated through some oversight by whatever entity you would choose. So what we're sharing with you is

that the 891 -- because of the way it's structured endangers all the things that the Staff fought for over the years at the Public Service Commission. What we have fought for since I have been Consumer Advocate. And so those -- all of those things, and all of those services that we are talking about that many Tennesseans find important to them are dramatically affected, and can be dramatically affected solely by the company's decision and not by regulation of the Public Service Commission because of the narrow language that is used to keep them from being able to do certain things.

Senator Cohen:

Thank you Mr. Williams. You have spoken well for the Consumer Advocate's office during your testimony here on directory assistance and are a testimony to the good work of Senator Cooper in passing the bill that created you. Senator Miller?