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Guy M. Hicks
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EXECUTIVE SECRETARY

May 15, 1997

OFFICIAL FILE

PLEASE

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VIA HAND DELIVERY

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 Response to the Consumer Advocate Division's "Motion to Admit Additional Evidence" in the above-referenced matter. A copy has been provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

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 RESPONSE TO THE CONSUMER ADVOCATE DIVISION'S "MOTION TO ADMIT ADDITIONAL EVIDENCE"

In the past seven weeks alone, the Consumer Advocate Division ("CAD") has filed fourteen post-hearing documents in this docket[1] in a frantic attempt to delay these proceedings and to divert the focus of these proceedings from the straightforward issue of whether United's proposed tariff complies with state law. In its most recent filing, the CAD seeks to further delay these proceedings by proffering "additional evidence" some two months after the conclusion of the hearing in this docket. The substance of this "additional evidence" was publicly available before the hearing in this docket, and the "additional evidence" has nothing to do with United's operations or with United's proposed tariffs. Moreover, the "additional evidence" is merely cumulative of evidence already in the record. The Tennessee Regulatory Authority ("TRA"), therefore, should deny the CAD's "Motion to Admit Additional Evidence."

[1] Since March 21, 1997, the CAD has filed the following documents: (1) Motion for Extension of Time or Continuance; (2) Notice of Inadvertent Late Filing; (3) Response to Objection; (4) Brief on Statutory Construction; (5) Reply to Response of BST; (6) Brief on Statutory Construction (Reply); (7) Response in Opposition to BST's Motion to Strike, or in the Alternative, Motion to Submit Testimony in Rebuttal or to Explain, or in the Alternative Motion to Strike the Consumer Advocate Statement to the Legislature; (8) Brief Regarding Directory Assistance; (9) Motion for Disclosure; (10) Motion to Strike Briefs of UTSE and BellSouth; (11) Response; (12) Response in Opposition to Motion to Strike Reply Brief; (13) Response in Opposition to Motion to Strike; and (14) Motion to Admit Additional Evidence.

The Tennessee Administrative Procedures Act provides no express guidance in determining whether to re-open a hearing on the basis of newly-discovered evidence. In court proceedings, however, the trial judge should not re-open a trial on the basis of newly-discovered evidence unless each of the following conditions exists: (1) the evidence was discovered after the trial; (2) the evidence could not have been discovered earlier with due diligence; (3) the evidence is material and not merely cumulative or impeaching; and (4) the evidence will probably change the result if a new trial is granted. *Crain v. Brown*, 823 S.W.2d 187, 192 (Tenn. Ct. App. 1991). Applying these principles to the CAD's motion, the TRA should not accept the CAD's "additional evidence" because the substance of the "additional evidence" could have been discovered before the hearing, and the "additional evidence" is irrelevant, cumulative, and according to the CAD, merely impeaching. Moreover, the unremarkable "additional evidence" proffered by the CAD would not change a decision that is based on the evidence that is already in the record.

There is nothing new about the "additional evidence" the CAD improperly attempts to inject into this proceeding. The fact that BellSouth's customers have added a record number of additional lines -- which is all that the press release and the affidavit attached to the CAD's motion say -- certainly was well-known and easily discoverable years before the conclusion of the hearing.[2] The fact that BellSouth released a document which simply summarizes and restates facts that were known and publicly available years before the hearing in this matter cannot justify re-opening the hearing or allowing the CAD to introduce more evidence.

[2] As early as 1993, for example, BellSouth's Summary Annual Report stated "[o]ver the past 10 years, no region of the country has grown faster than the Southeast. In 1993, about one of every five new BellSouth lines connected was for customers who wanted new conveniences for their home -- extra lines, children's phones, fax machines, home offices, computers and telecommuting links."

Otherwise, the CAD could perpetually re-open hearings every time a newspaper article, press clipping, or trade publication mentions any subject that arguably has been addressed in such hearings.

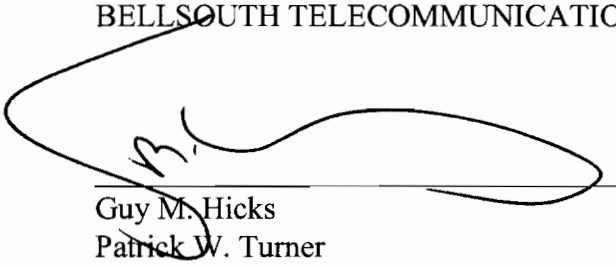
Moreover, despite the CAD's repeated efforts to divert the focus of this docket elsewhere, the issue in this proceeding is whether the proposed tariff filed by United complies with state statutes. The "additional evidence" the CAD attempts to introduce, however, is a document created by BellSouth, not United, and it discusses BellSouth's operations, not United's. It simply has nothing to do with United or with United's tariffs. The "additional evidence," therefore, is simply irrelevant to this proceeding.

Finally, the "additional evidence" is merely cumulative, allegedly impeaching, and certainly not the type of evidence that would alter a decision based on the evidence already in the record. The affidavit the CAD seeks to admit as "additional evidence" discusses "the reclassification of residential access lines as business access lines when more than five access lines terminate at one household." Affidavit of Archie R. Hickerson at ¶ 3. Mr. Hickerson, however, has already presented his opinions on "the proper rate for 6 or more residence lines," Direct Testimony of Archie Hickerson at 46, and the CAD discussed this matter during the hearing in this docket. Moreover, the CAD alleges that this additional evidence "impeaches any basis for BellSouth's support of [United's] position . . . ." CAD Motion at 1 (emphasis added). Although the "additional evidence" does no such thing, it is clear that the CAD is not permitted to add evidence to the closed hearing in this matter in an attempt to impeach BellSouth's "support of [United's] position."

Evidence that BellSouth customers have subscribed to additional lines simply has nothing to do with United's compliance with state statutes. The CAD's motion to present additional evidence, therefore, is merely another attempt to delay these proceedings and to improperly divert the focus of these proceedings. Accordingly, the TRA should deny the CAD's motion.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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CERTIFICATE OF SERVICE

I hereby certify that on May 15, 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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