BEFORE THE
TENNESSEE REGULATORY AUTHORITY

IN RE: BELLSOUTH'S ENTRY INTO LONG DISTANCE INTERLATA SERVICE IN TENNESSEE PURSUANT TO SECTION 271 OF THE TELECOMMUNICATIONS ACT OF 1996

DOCKET NO. 97-00309

Brief in Opposition to BellSouth's Motion for Delay

The Southeast Competitive Carriers Association ("SECCA") and ACSI, now doing business as e.spire ("e.spire") urge the Tennessee Regulatory Authority ("TRA") to terminate this proceeding.

More than a year after BellSouth Telecommunications Inc., ("BellSouth" or "Bell") filed this application to enter the interLATA market, it is undisputed that the company does not yet meet the "Track A" competitive standard (*ie.*, there are no facilities-based carriers offering more than *de mimimus* residential service) nor is Bell able to comply with each point on the fourteen point checklist set out in the federal Telecommunications Act. While all parties agree that Bell has met some of those requirements, Bell itself concedes that "consideration of BellSouth's entry into long distance now is premature" at least until the TRA has established permanent, cost-based rates.

Rather than keep the docket open indefinitely, the most sensible course of action is to terminate this proceeding now and announce, based on the record developed during last year's hearings, which federal standards Bell has met and which have not been met. If and when Bell files a new, more up-to-date application, the TRA should open a new docket and convene a second hearing, focusing on those federal standards which Bell did not meet in the first proceeding.

None of the reasons cited in Bell's Motion warrant further delay in addressing issues which were fully litigated almost twelve months ago.

a. Until cost-based rates are established, Bell cannot comply with some of the fourteen point checklist. Furthermore, in light of the Supreme Court's recent decision, which requires additional FCC proceedings, it will be months, if not another year, before cost-based rates can be finally determined. Had anyone envisioned when this application was filed that by March, 1999, the fixing of cost-based rates would still be many months away, the TRA would surely have dismissed Bell's application as premature.

That is exactly what the agency should do, rather than continuing this open-ended, never-ending application process. Once cost based rates have been established, Bell can re-file its 271 application.

b. The parties' negotiations over the filing of supplemental evidence have bogged down for the very reasons that the TRA should now terminate these proceedings. BellSouth wants to be able to "update" the evidentiary record, even up to the current moment, without having to go through additional, evidentiary hearings. While AT&T and NEXTLINK do not oppose consideration of BellSouth's voluminous, supplemental filing made last summer, they have asked to respond to those filings based on evidence available at that time. The parties fear, however, that BellSouth will then submit "rebuttal" testimony based on more recent developments, and that the other parties will not have a full opportunity to respond.

The TRA should simply call a halt to these maneuvers. When Bell finally files its FCC application, the TRA should have the most up-to-date information available. That information, however, cannot be Bell's alone. The parties' efforts to control the record demonstrate the need

for the TRA to take control of the docket, terminate this proceeding, and re-open it when Bell can make a credible demonstration that it has met the criteria of Section 271.

c. The deposition of Mr. William Denk can be considered by the TRA if and when BellSouth claims it has met the Track A threshold. For now, the TRA can find, based on the evidence presented last year and the monthly updates filed by BellSouth and other carriers, that no facilities-based competitor is offering more than *de minimus* residential service in Tennessee.

d. Simply because the parties have not reached agreement on all the checklist items cited by the FCC in the Louisiana proceeding, that is no reason for the TRA to delay announcing its own decisions on some, or all, checklist items. When Bell re-files its application, the parties can always announce at that time whether they have reached agreement concerning Bell's compliance.

Conclusion

In light of the Supreme Court's decision, it may be months before this agency or the FCC is in a position to declare that any Bell company is eligible to enter the interLATA market. In the meantime, the record in this proceeding will become increasingly stale and of little use to the FCC. The only logical course is for the TRA to terminate this case now, make decisions on those federal requirements Bell has met, and dismiss the remainder of the case without

prejudice to any party.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 1999, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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