AT&T
Suite 700
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April 14,1999

David Waddell
Executive Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *BellSouth Telecommunications, Inc's Entry into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996.*

Docket No. 97-00309

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of AT&T's Comments on BellSouth's Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing.

Sincerely,

Jim Lamoureux

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In re:	)	
BellSouth Telecommunications, Inc.'s	)	
Entry Into Long Distance (InterLATA)	)	Docket No.: 97-00309
Service in Tennessee Pursuant to	)	
Section 271 of the Telecommunications	)	
Act of 1996	)	

AT&T'S COMMENTS ON BELLSOUTH'S NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE AND WITHDRAWL OF ADVANCE NOTICE OF SECTION 271 FILING

Pursuant to the Authority's April 9, 1999, Notice in this proceeding, AT&T Communications of the South Central States, Inc. ("AT&T") hereby files its comments in response to BellSouth Telecommunications, Inc.'s ("BellSouth") April 8, 1999, Notice of Voluntary Dismissal Without Prejudice and Withdrawal of Advance Notice of Section 271 Filing. By its filing, BellSouth seeks to have the Authority turn its back on the sixteen months of proceedings that have taken place in this docket. Despite the fact that BellSouth claimed as recently as December 1998 that it had opened the local market in Tennessee and had fulfilled the 14-point checklist,[1] BellSouth now believes that the better course for the Authority to take would be to allow BellSouth to voluntarily dismiss this proceeding and allow BellSouth at some "appropriate time" (to be determined by BellSouth) to renew its filing.

[1] On December 17, 1998, BellSouth filed a matrix of the issues raised by the Federal Communications Commission's Second Louisiana Order, CC Docket No. 98-121 purportedly to establish that it had met the 14 point checklist of Section 271. Ironically, at that time BellSouth felt "compelled" to bring certain matters to the attention of the Authority that were "not part of the current record before the Authority." Thus, BellSouth is not correct that the last time it "supplemented" the record was in July. BellSouth's Notice conveniently ignores its December 1998 pleading.

While AT&T has maintained throughout these proceedings that BellSouth cannot demonstrate compliance with Section 271 of the Act, the Authority should not simply allow BellSouth to walk away from these proceedings. To do so would ignore the substantial record developed in this docket, as well as discount the considerable resources expended by the Authority, its Staff and the parties to this proceeding. Additionally, such action would deprive BellSouth, the parties, and Tennessee consumers of the benefits of the substantial work accomplished to date.

It is important to remember, as AT&T reiterated in its response to BellSouth's motion to remove Item 1 from the March 16, 1999, Final Conference Agenda, that this case is not just about BellSouth' ability to provide long distance service in Tennessee – it is about whether BellSouth has opened its local monopoly to competition. Just because BellSouth decides to postpone its efforts to enter the long distance market in Tennessee, in no way should BellSouth's unilateral postponement alleviate BellSouth's obligations to open its local market to competition, or the TRA's efforts to ensure that BellSouth opens its local markets to competition. In order to ensure that some tangible benefit is derived from the sixteen months of this case, the TRA should allow the Hearing Officer to fulfill the mandate conferred by the Authority at the March 16, 1999, Directors' Conference to issue a status report, providing BellSouth and the other parties with the Authority's current views of BellSouth's SGAT and compliance with Section 271.

BellSouth's Notice is curious, given BellSouth's own repeated insistence that the TRA issue a decision in this docket, even in the face of a changing landscape. Such action would be in the interests of Tennessee consumers, according to BellSouth, interests which BellSouth now would have the Authority to ignore. At the January 22, 1998, Status Conference, for example,

counsel for BellSouth represented to the Hearing Officer that it was in the best interests of Tennessee consumers that this case be resolved quickly:

> ***I think it's in everybody's interest, particularly the consumers of Tennessee, to have any problems identified now*** rather than July. By going through the competitive checklist, the TRA can look at each of the 14 things that BellSouth must do to open -- to show that the market is open to competition and can satisfy itself that either BellSouth has done or has not done what is legally required. And if BellSouth has not done something, the TRA can say, you haven't done this, and here is what you need to do to fix it. Again, ***that should be done sooner rather than later***.

January 22, 1998, Status Conference, Tr. at 8-9. (Emphasis added.)[4] Indeed, counsel for BellSouth stressed that it was "***imperative that the TRA press forward***, [and that] the TRA look at the other items in the checklist that have to be satisfied in order for BellSouth to show compliance." *Id.* Counsel for BellSouth even suggested that it would be in the best interests of the CLECs to press forward with the case:

> If all these competitors want to get in this marketplace and serve Tennessee consumers, if there's something that BellSouth is not doing that is -- or something it is doing that is preventing those competitors from getting in the marketplace, ***shouldn't the TRA know that now? And shouldn't the TRA deal with that now*** rather than sometime in August or sometime in September when the cost docket's -- and then we're right back here again with the same cast of characters, making the same arguments, and looking at the same issues. ***That ought to happen now***.

Id. at 16-17. (Emphasis added.)

Despite these admonishments, BellSouth now wishes to avoid the very decision it so aggressively sought for the past sixteen months. However, the very interests invoked by BellSouth to justify this proceeding--competition and efficiency--mandate that the Authority provide its view of BellSouth compliance. BellSouth, the parties, competition, and most importantly consumers in Tennessee will suffer greatly if the Authority does not provide its

[4] Similarly, in its January 20, 1998, Statement of Issues and Comments, BellSouth argued, "it is not in the interests of Tennessee consumers for this critical hearing to be delayed." *BellSouth's Proposed Statement of Issues and Comments*, Docket No. 97-00309 at 6 (January 20, 1998).

analysis of BellSouth's compliance with Section 271 of the Act based on the record developed to date.

BellSouth's current attempts to delay the TRA's consideration of this matter also highlight the spurious arguments BellSouth has made throughout the course of this proceeding. BellSouth continually has claimed that AT&T and other CLECs were attempting to delay competition by delaying BellSouth's entry into the long distance market. According to BellSouth, "The record in the proceeding is replete with examples of the attempts (both procedurally and substantively) that the intervenors have made to delay BellSouth's entry into long distance." BellSouth Telecommunications, Inc's Post Hearing Brief at 5-6 (filed July 13, 1998). At the same time, BellSouth was claiming that it had provided "the evidence...(which) conclusively demonstrates that the local market in Tennessee is open to competition and BellSouth has fully complied with the requirements of sections 251, 252 (d), and 271 (c) (2) (B) of the Telecommunications Act..." *Id. at 1.* In fact, AT&T and other CLECs were simply pointing out that BellSouth could not demonstrate compliance with the Act, a conclusion with which BellSouth now apparently agrees. The source of the delay thus lies not with CLECs, but with BellSouth, as it now attempts to avoid a decision on its efforts to meet the competitive mandates of the Act.

Rather than ignoring the substantial efforts untaken by the TRA, its Staff and the parties, the Authority should take the opportunity to provide all interested parties with its view of the status of BellSouth's compliance, including a "road map" of BellSouth's compliance with its obligation to open its local market to competition, as discussed by the Directors at the March 16, 1999, Directors' Conference. *See Transcript* at 19-24, 27-31. Such an analysis would assist all parties in future proceedings before the Authority. Rather than starting at ground zero, as

BellSouth suggests, the Authority and the parties would have a firm basis upon which to move forward, not only with determining compliance with Section 271 of the Act, but ensuring that BellSouth is providing the nondiscriminatory access required by the Act. Such efforts could result in less protracted proceedings in the future. This was precisely the rationale of the TRA when it requested that the Hearing Officer issue a status report. *See Transcript* at 26-28, 30-32. "[T]he diligence and hard work of the Tennessee Regulatory Authority . . . and Staff. . ." recognized in BellSouth's Notice should not be in vein.

BellSouth, the parties and Tennessee consumers would benefit from a decision on BellSouth's compliance with Section 271 based on the record in this proceeding. At a minimum, the parties should have the benefit of the Hearing Officer's report or any Staff analysis on BellSouth compliance. Such analyses will provide additional assistance to BellSouth and the parties in any future proceedings initiated by BellSouth under Section 271 of the Act.

Above all, BellSouth's efforts to delay these proceedings should not be permitted to delay BellSouth's compliance with its obligations to open the local market to competition by removing BellSouth's incentive to cooperate in removing the remaining barriers to competition. BellSouth's efforts to terminate this proceeding should in no way preclude the TRA from continuing its efforts to enforce BellSouth's obligations to open its local market to competition, such as its obligation to provide non-discriminatory access to operations support systems. To that end, for example, BellSouth should be required to participate in independent 3rd party testing of its procedures, processes and systems to prove, once and for all, whether those processes, procedures and systems offered by BellSouth to CLECs entering the local market are truly nondiscriminatory. AT&T intends to file a separate motion asking the TRA to open a docket to address this issue.

BellSouth's recent actions in this docket also suggest the need for additional procedural safeguards in any future proceedings. BellSouth's current efforts to keep the Authority from ruling on the merits of this proceeding following its continual attempts to supplement the record in this docket under the guise of compliance with the Authority's "directions" suggest that the Authority should consider requiring BellSouth to institute proceedings in this docket only when and if BellSouth has an actual intention to file with the FCC and on a record that is complete when filed. In the absence of such a requirement, the Authority has no assurance that BellSouth will not again engage the Authority and the CLEC community in protracted proceedings only to claim later that unspecified events have overtaken the process and that a decision is not appropriate at the time.

Finally, BellSouth's continual and surreptitious attempts to supplement the record suggest the need for complete discovery, including depositions, in order to fully evaluate the information submitted by BellSouth prior to any subsequent hearing on the merits of BellSouth's SGAT and 271 compliance. Such discovery could enhance the parties' ability to determine the status of the record, the sufficiency of the evidence provided and identify any gaps in BellSouth's filing before the matter comes to hearing. Such discovery also could be used to streamline the hearing process and, coupled with a decision on the merits of BellSouth's current compliance with Section 271, provide for a more efficient review of any future BellSouth compliance.

The Authority should not allow BellSouth to simply walk away from the sixteen months of proceedings in this docket. The Authority should issue its views on BellSouth's SGAT and its compliance with Section 271 based on the current record. At a minimum, the TRA should allow the Hearing Officer to fulfill his mandate to issue a status report on the case and render an initial

order with findings and conclusions on the merits. Finally, the Authority should consider adopting additional procedural safeguards to limit BellSouth's ability to prematurely engage the TRA and the parties in future protracted litigation.

Respectfully submitted,

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.

By: _____

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Dated: April 14, 1999

CERTIFICATE OF SERVICE

I, James P. Lamoureux, hereby certify that on this 14th day of April 1999, a true and correct copy of the foregoing has been delivered via U. S. Mail, postage prepaid to the following counsel of record:

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