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September 5, 2001

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
360 James Robertson Parkway
Nashville, TN 37201

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 David:

Please find enclosed the original and thirteen copies of the Response of MCI WorldCom Network Services, Inc. to BellSouth's Petition for Reconsideration and Clarification filed on August 27, 2001 in the above-captioned proceeding.

Copies have been forwarded to parties.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

HW/nl
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

RESPONSE OF MCI WORLDCOM NETWORK SERVICES, INC. TO THE PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR CLARIFICATION AND RECONSIDERATION

MCI WorldCom Network Services, Inc. ("MCI WorldCom") submits the following response to the August 27, 2001, Petition of BellSouth Telecommunications, Inc. ("BellSouth") for "Clarification and Reconsideration" of the Hearing Officer's Order of August 10, 2001. MCI WorldCom supports the comments filed in response to BellSouth's Petition by AT&T Communications of the South Central States, Inc. and TCG MidSouth, Inc. (collectively "AT&T"). In addition, MCI WorldCom will address here BellSouth's argument that the Hearing Officer should not schedule hearings in this proceeding on any issues other than whether BellSouth has complied with the fourteen point checklist set forth in 47 U.S.C. § 271(c). Specifically, BellSouth opposes any TRA inquiry into the broader issue of whether granting BellSouth's application for in-region, interLATA authority is consistent with "the public interests, convenience, and necessity." 47 U.S.C. § 271(d)(3)(C). Although BellSouth has already filed pleadings which address the public interest issue, BellSouth states that it does not intend to include those pleadings in its presentation to the TRA and asks that the Hearing Officer reconsider his decision to schedule hearings on the public interest issue.

BellSouth's position is based entirely on the language of 47 U.S.C. § 271(d)(2)(B) which requires the FCC to "consult" with state commissions "to verify compliance . . . . with the requirements of subsection (c)." Subsection (c) refers to the fourteen point checklist. The quoted language does not, however, prohibit state commissions from considering "non-checklist" issues such as the public interest.

I. Other state commissions are already engaged in looking at non-checklist issues. According to the August 13, 2001, issue of *Telecommunications Reports*, at page 25, the Public Utility Commission of Oregon has scheduled a four day workshop to consider 271 issues "which aren't part of the 14-point checklist." Such issues include the Bell company's performance assessment plan and "public interest issues." The article notes that "other states" in the Quest region, "such as Colorado" also have workshops scheduled "focusing on outstanding non-checklist issues."

Within the BellSouth region, intervening carriers have filed testimony on the public interest issue in several 271 proceedings. BellSouth has not objected to such testimony and, to counsel's knowledge, has not argued in any state that the public interest issue should not be discussed during the company's 271 hearing.

II. Moreover, BellSouth itself argued during its first 271 hearing and continues to argue in the current proceeding that the public will benefit by the swift granting of the carrier's application because of increased competition in the interLATA market. Such arguments have nothing to do with the checklist but are relevant only to the public interest issue. BellSouth cannot argue on the one hand that the public will gain from granting the application and then, on the other hand, that the public interest is not an issue in this proceeding.

III. Finally, the FCC has specifically invited all interested parties, including the state commissions, to submit information relevant to the public interest issue. In weighing

Ameritech's 1997 application for interLATA authority in Michigan (FCC 97-298, Order released August 19, 1997), the FCC outlined a number of factors the agency will consider in making its public interest determination. Those factors include the level of competitive services being offered, [1] performance measures and self-executing penalties, state and local laws that may impede market entry,[2] and evidence that a BOC applicant has engaged "in a pattern of

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[1] The FCC specifically held that the public interest issue encompasses a broader look at the level of competition than merely meeting the requirements of Track A. The agency wrote (paragraph 391):

> For example, as we noted at the outset of this Order, it is essential to local competition that the various methods of entry contemplated by the 1996 Act be truly available. The most probative evidence that all entry strategies are available would be that new entrants are actually offering competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof), in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large). We emphasize, however, that we do not construe the 1996 Act to require that a BOC lose a specific percentage of its market share, or that there be competitive entry in different regions, at different scales, or through different arrangements, before we would conclude that BOC entry is consistent with the public interest. Rather, we believe that data on the nature and extent of actual local competition, as described above are relevant, but not decisive, to our public interest inquiry, and should be provided. If such data are not in the record or available for official notice, we would be forced to conclude that the BOC is not facing local competition. Our inquiry then would necessarily focus on whether the lack of competitive entry is due to the BOC's failure to cooperate in opening its network to competitors, the existence of barriers to entry, the business decisions of potential entrants, or some other reason.

[2] The agency wrote (in paragraph 396):

> We would also want to know about state and local laws, or other legal requirements, that may constitute barriers to entry into the local telecommunications market, or that are intended to promote such entry. We would, for example, be interested in knowing whether state or local governments have imposed discriminatory or burdensome franchising fees or other requirements on new entrants. We also would want to know if states or municipalities have denied new entrants equal access to poles, ducts, conduits, or other rights of way. In addition, we would be interested in whether a state has adopted policies and programs that favor the incumbent, for example, those relating to universal service. Although we recognize that a BOC may not have the ability to eliminate such discriminatory or onerous regulatory requirements, we believe that local competition will not flourish if new entrants are burdened by such requirements.

discriminatory conduct or disobeying federal and state telecommunications regulations."[3] The FCC realized that such information could best be provided by state commissions. In the next paragraph, the agency encouraged all "interested parties", "including the Department of Justice and the relevant state commission to identify other factors that we might consider", regarding the public interest issue. *Id.*, at paragraph 398.

BellSouth, of course, is not required to offer evidence to the TRA (except in response to discovery requests) on these public interest matters. How BellSouth chooses to present its case is up to BellSouth. But there is nothing in state or federal law to prohibit the TRA from conducting hearings on the public interest issue and no doubt that the FCC has encouraged state commissions to do exactly that.

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[3] 397.

> Furthermore, we would be interested in evidence that a BOC applicant has engaged in discriminatory or other anticompetitive conduct, or failed to comply with state and federal telecommunications regulations. Because the success of the market opening provisions of the 1996 Act depend, to a large extent, on the cooperation of incumbent LECs, including the BOCs, with new entrants and good faith compliance by such LECs with their statutory obligations, evidence that a BOC has engaged in a pattern of discriminatory conduct or disobeying federal and state telecommunications regulations would tend to undermine our confidence that the BOC's local market is, or will remain, open to competition once the BOC has received interLATA authority.

For these reasons, the Hearing Officer should deny BellSouth's request that the Hearing Officer reconsider his decision to schedule hearings on non-checklist issues, such as the public interest.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of September, 2001, 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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