AT&T
Suite 1010
511 Union Street
Nashville, TN 37219

July 9, 1998

By Hand

David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *In Re: Universal Service Generic Contested Case*
Docket No. 97-00888

Dear Mr. Waddell:

Please find enclosed for filing the original and 13 copies of AT&T Communications of the South Central States, Inc. Opposition to the Motion for Rehearing and Reconsideration of BellSouth Telecommunications, Inc. and the Petition of United Telephone-Southeast, Inc. for Reconsideration and Clarification. Copies will be served on all parties of record in this proceeding.

Thank you for your assistance in this matter.

Respectfully Submitted,

Jim Lamoureux

Jim Lamoureux

Encls.

Cc: all parties of record

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re:	)	
	)	
Universal Service; Generic	)	Docket No. 97-00888
Contested Case	)	

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.'S OPPOSITION TO THE MOTION FOR REHEARING AND RECONSIDERATION OF BELLSOUTH TELECOMMUNICATIONS, INC. AND THE PETITION OF UNITED TELEPHONE-SOUTHEAST, INC. FOR RECONSIDERATION AND CLARIFICATION

AT&T Communications of the South Central States, Inc. ("AT&T") hereby submits its opposition to BellSouth's Motion for Rehearing and Reconsideration and to United's Petition for Reconsideration and Clarification (the "ILEC Motions") in the above-captioned matter. The TRA should deny the ILEC Motions; neither presents the TRA with any valid reason to rehear or reconsider the TRA's May 20, 1998, Order.[1] Indeed, while BellSouth and United both reargue evidence and arguments each presented at the hearing and in their post-hearing briefs, neither identifies a single issue on which the TRA's Order is contrary to Tennessee or federal law, or the record in this proceeding. On the contrary, the TRA's Order is well-grounded in the voluminous record of this proceeding, is consistent with federal and Tennessee law, and implements sound public policy in the best interests of Tennessee consumers. For these reasons, the ILEC Motions should be denied.

---

1 / AT&T's Opposition addresses only those issues which BellSouth and United request that the TRA reconsider or rehear. AT&T does not address, and takes no position on, the two issues which United requests that the TRA "clarify."

INTRODUCTION

In its Order in Phase I of this proceeding, issued May 20, 1998 ("Phase I Order"), the TRA resolved several policy issues concerning the need for and method of determining the amount of a universal service fund in Tennessee. The TRA's resolution of these issues also served as the foundation for much of the testimony and evidence presented in Phase II of these proceedings. BellSouth and United now protest one of the most fundamental of the TRA's rulings -- the TRA's determination of the revenues to be included in calculating the revenue benchmark.

The determination of the revenues to be included in the revenue benchmark has a direct effect on the size of the universal service fund. Thus, BellSouth's and United's efforts to eliminate revenues from the benchmark, and thus decrease the revenue benchmark, are designed to increase the amount of the fund, and thus increase the amount Tennessee consumers will pay to support the fund. The effect of BellSouth's and United's reargruments thus would be to raise the universal service tax on Tennessee consumers while insulating the ILECs' monopoly revenues from competition. This is directly contrary to the TRA's stated goal for this proceeding. See Phase I Order at 4, 7.

The ILEC Motions should be denied for at least two reasons. First, the motions state insufficient bases for rehearing or reconsideration under Tennessee law. Second, for the reasons stated below, the TRA's Order is fully consistent with federal and Tennessee statutes, the weight of the evidence in this case, and, most importantly, the interests of Tennessee consumers.

I. BELLSOUTH'S AND UNITED'S MOTIONS ARE INSUFFICIENT UNDER TENNESEE LAW TO GRANT RECONSIDERATION OR REHEARING

Tenn. Code Ann. § 65-2-116 sets forth the permissible grounds for motions for reconsideration. Under § 65-2-116, parties may seek rehearing and reconsideration upon a showing of: (1) a material error of law; (2) a material error of fact; or (3) the discovery of new evidence which could not have been previously discovered by due diligence. T.C.A § 65-2-116. The ILEC Motions do none of these. Neither of the ILEC Motions alleges the existence of new evidence, and, indeed, no such evidence exists. Moreover, United asserts no material error of law or fact. United's motion simply asserts that the TRA's position is "improper," (United Mot. at 2, 3), and its own position is "much more appropriate." (Id. at 5.) Thus, United simply believes that it is right, and the TRA is wrong. United's motion, *on its face*, is insufficient procedurally and should be rejected.

BellSouth, unlike United, does at least *assert* "material errors of both fact and law." However, upon close examination, BellSouth's assertions do not rise to the level required by Tennessee statute for a rehearing or reconsideration of the record. BellSouth does not allege that the TRA ignored evidence or that the TRA's decision misstates evidence from the hearing; BellSouth simply alleges that the TRA's decision does not comport with the testimony *BellSouth presented* at the hearing. However, the fact that the TRA heard and considered BellSouth's evidence, and, in light of all the other evidence adduced at the hearing issued a decision which BellSouth disagrees with, is not an error, and it certainly is no basis for a rehearing. It is the TRA's job, as it is the job of any trier of fact, to hear evidence and render decisions based on that evidence. The TRA did so in this case, and there is no basis for rehearing or reconsideration.

BellSouth's assertions of material errors of law are similarly deficient. There is no assertion that the TRA in any way ignored Tennessee or federal law. Rather, BellSouth argues that the TRA's decision does not comport with *BellSouth's interpretation* of federal and Tennessee statutes. Other parties, including AT&T, disagree with BellSouth's interpretation of those statutes. The TRA heard testimony, and was fully briefed, on all parties' interpretations of these statutes. It is the TRA's job to render its interpretation of the law. The fact that the TRA did so in a manner which does not comport with BellSouth's interpretation is not a material error of law.

All of the arguments in the ILEC Motions were addressed at the hearing and in the parties' post-hearing briefs. Contrary to the ILEC Motions, proffered errors of fact and law must present more than simply reargument of a record fully developed and considered by the TRA. Memphis Fire Insurance Co. v. Tidwell, 495 S.W.2d 198 (Tenn. 1973) (allegations of "material error" were actually reargument of matters considered and determined in original opinion and thus insufficient as a matter of law); City of Nashville v. State Board of Equalization, 210 Tenn. 587, 360 S.W.2d 458 (1962) (petition for rehearing "should *never* be used merely for the purposes of re-arguing the case on points already considered and determined") (emphasis added). Errors of fact and law are limited to "any decisive matter of law or fact" which is in the record before the TRA but overlooked in its opinion. Id. There is nothing offered by either BellSouth or United in their motions that was overlooked by the TRA -- only their continuing disagreement with the TRA's fully considered opinion, reached after consideration of a full record. What BellSouth and United really seek is "one more bite at the apple," an opportunity denied them by statute and regulation. Their motions should be rejected.

II. THE AUTHORITY'S REVENUE BENCHMARK DECISION WAS CORRECT AS A MATTER OF LAW AND POLICY

The TRA, based on the record, decided that the revenues included in the revenue benchmark should be defined as "the average revenue per residential line," including revenues from: basic local service, toll, directory assistance, all vertical features, touch-tone, zone charges, long distance access including intrastate and interstate, the interstate subscriber line charge, Yellow Page advertising, and White Page services. (Phase I Order at 35-38.) In making this decision, the TRA specifically held that only "core services" would be supported, if necessary, by an explicit universal service fund. (Phase I Order at 37.) After consideration of all the evidence, the TRA further found that inclusion of additional residential services in the benchmark was essential to a determination of high cost areas and not at all inconsistent with the ultimate objective of preserving universal service. (Phase I Order at 37.)

BellSouth and United disagree with the benchmark the TRA has established (Issue 9j) and will use to determine whether any subsidy of residential basic services currently is required (Issue 8).[2/] Specifically, BellSouth, as it did in the Phase I proceeding, argues that any revenue benchmark which includes revenues from services other than basic residential service violates the federal Act. (BellSouth Mot. at 6.) BellSouth was wrong then, and it is still wrong now. Section 254(e), which BellSouth relies on, does not even deal with revenue benchmarks. Instead, this section states only that any new universal service fund created pursuant to the Act should be explicit and sufficient to preserve universal service. 47 U.S.C.A. § 254(e). As such, this section

---

2/ While BellSouth has articulated its disagreement with respect to both Issues 8 and 9, its complaint in both cases is identical -- that the revenue benchmark should include only basic local service revenues, contrary to the rulings of both the FCC and the TRA.

in no way prevents the TRA from making the benchmark decision it did, in the interests of Tennessee consumers.

Importantly, the FCC, which is charged with implementing § 254 at the federal level, has determined, just as the TRA did, that a revenue benchmark *including* residential revenues other than basic service revenues is fully consistent with the Act and is the proper benchmark for preservation of universal service at the present time. The FCC established a benchmark based on "revenues per line for local, discretionary, interstate and intrastate access charges and other telecommunications revenues." USO ¶¶ 259-262.

Moreover, the TRA's ruling is consistent with the Tennessee universal service statute and with the clear weight of the evidence in this case. The Tennessee statute permits creation of a universal service fund only *as necessary* to preserve universal service and, then, only by a non-discriminatory alternative mechanism. T.C.A. § 65-5-207(c).[3]/ This is the basis for the TRA's revenue benchmark decision.

The TRA properly found, based on evidence presented at the hearing, that when competitors decide to provide service to residential customers in high cost areas, such

---

3 / BellSouth distorts the conclusions and purpose of the TRA in this proceeding. The TRA did not determine that all of the revenue sources included in the revenue benchmark constitute universal service. (BellSouth Mot. at 2 n. 1.) Nor did the TRA determine that there is a subsidy for all residential services. (Id. at 2.) Rather, the TRA determined, based on the evidence in the record, that revenues from all services should be included in determining whether a subsidy is necessary to support universal service. It is true that *BellSouth* opined that the necessity of a subsidy is determined by comparing the cost of universal service with the revenues generated by universal service (BellSouth Mot. at 3). However, there was substantial evidence in the record to the contrary, that the necessity of a subsidy is determined by comparing the cost of universal service with all local revenues. That the TRA credited this evidence over BellSouth's is not an error; it

(footnote continued on next page)

competitors will offer a number of services to these customers. (Phase I Order at 36; see also Gillan, Reb. 5-7.) The TRA thus relied upon evidence in the record which demonstrates that the revenue benchmark should represent the average price that consumers pay today for entire bundle of services they typically purchase. (Gillan, Reb. 6.) The evidence in the record demonstrates that consumers do not subscribe to telephone service simply to make and receive local calls; thus, carriers do not anticipate receiving revenue only from providing local service. (Gillan, Reb. 9.) Rather, carriers seek to attract and serve customers because of *all* of the revenues associated with providing service to an end-user -- including vertical services, intraLATA toll services and access service -- and not just those revenues guaranteed by basic service. (Id. at 5)

This evidence is undisputed in the record. (See, e.g., Gillan, Reb. 6 (citing BellSouth data indicating that more than 86% of BellSouth's customers spend more than the amount of the basic service charge.)) Even BellSouth's own witness agreed that in order to determine a subsidy, "[i]t's a simply matter of asking whether the cost exceeds the revenue for the bundle, for the individual service, for whatever segment of the business you wish to call out." (Emmerson, Tr. v.1, 143.) Moreover, even the Coalition of Small LECs agreed that revenue from chargeable elements that lead to cost recovery should be included in the benchmark. (Watkins, Tr. v.1, 103-04.) The TRA acted properly in relying on this evidence and in determining that the revenue benchmark should include all revenues associated with the provision of service to Tennessee consumers.

(footnote continued from previous page)
simply demonstrates that the TRA found the evidence against BellSouth's position more persuasive than the evidence BellSouth produced.

Indeed, Mr. Gillan explained at the hearing why it is necessary to include all revenues in the revenue benchmark. "Where there is profit, you don't need subsidy." (Gillan, Tr. v.2, 293.) Thus, if serving customers is profitable (*i.e.*, the revenues received for *all* services exceed costs), competitors will require no additional incentive to provide *basic* service -- any subsidy is by definition unnecessary and, hence, precluded by the Act and by Tennessee statute. (See Gillan, Reb. 2.) BellSouth's argument is thus not really about universal service subsidies; it is about guaranteeing BellSouth a particular level of revenue.[4/] That, however, is not the purpose of the federal Act or the Tennessee statute, and it certainly is no basis for rehearing or reconsideration in this proceeding.

Moreover, inclusion of all residential service revenues in the benchmark is necessary to insure that ILECs will not over-recover from any eventual universal service fund at the expense of Tennessee consumers and competitors seeking entry into Tennessee markets. The TRA has determined, as the parties (including BellSouth and United) recommended, that the costs used to determine universal service will be unseparated, (see Emmerson, Tr. v. 1, 145), meaning, for example, that "the cost of the loop, which is used by virtually all services, will not be allocated to individual services." (Phase I Order at 37; Gillan, Reb. 7.) The facilities that provide local

---

4 / BellSouth is incorrect that the TRA's purpose is to identify all implicit subsidies and make them explicit. (BellSouth's Mot. at 5.) The TRA's purpose is to determine whether a universal service fund is necessary, determine the amount of any such fund, and to make subsidies from the fund explicit. The TRA specifically determined that implicit subsidies are "hidden" in the prices of other goods or services. (Phase I Order at 33.) Therefore, the amount by which some services today are priced above cost is not determinative of the need for a universal service subsidy. Some high prices are simply high prices, which generate excess revenue, not subsidies. If the TRA transfers all of these excess funds received by ILECs into a universal service fund, the fund will be too

(footnote continued on next page)

service also provide switched access service, vertical services, intraLATA and other revenue-generating services. Indeed, the cost studies presented by AT&T, BellSouth, and United in Phase II calculate the cost of providing universal service *as well as* other services which are provided be means of the network facilities used to provide universal service. Thus, should the revenue benchmark fail to include revenues from all services making use of the facilities used to provide universal service, the ILECs would receive the entire cost of these facilities from competitors' and consumers' contributions to a universal service fund for basic services, while the ILECs would also recover a portion of these same costs a second time through revenues received from the many other services that use these facilities.[5/] Such a result is obviously contrary to the interests of competition and Tennessee consumers.

III. THE AUTHORITY'S DECISION TO PROVIDE SUPPORT ONLY FOR PRIMARY RESIDENTIAL LINES WAS CORRECT AS A MATTER OF LAW AND POLICY

United also protests the TRA's decision to provide support only for primary residential lines. Tennessee law, however, specifically defines "basic local exchange telephone services" as consisting of *an* access line, in the singular. T.C.A. § 65-5-208(a)(1). This definition clearly limits universal service to a single residential line, and the TRA properly has adhered to this definition. Moreover, the clear weight of the evidence in the record of this case establishes that

---

(footnote continued from previous page)

large and consumers will not realize the benefit of a reduction in prices that were inflated with monopoly profits.

5/ As noted in the testimony of AT&T witness Joe Gillan, competition does not currently exist in the Tennessee residential market. (Gillan, Reb. 8-9.) Thus, BellSouth and United exclusively will receive the benefits of this overpayment, while potential entrants and Tennessee consumers who have to pay for this over-recovery will be the big losers.

second residential lines are not necessary to ensure that a household is connected to the network for basic health and safety needs, which, after all, is the essential purpose of universal service support. (Guepe, Dir. 12.) Additional lines are a luxury, and the expense of such lines should not be supported by other customers, many of whom only have one line.

Finally, as noted in AT&T's Post-Hearing Brief in Phase I of this proceeding, the weight of the evidence in the record also suggests that second residential lines are highly profitable. (See AT&T Post-Hearing Brief at 25-27; see also BellSouth's Response to AT&T's First Data Request, Item No. 11 (Nov. 5, 1997).) As such, any "subsidy" for these lines would be unnecessary and, hence, contrary to the Tennessee Act. T.C.A. § 65-5-207. In fact, many of these second lines already have been installed as "spare capacity" when the primary network was constructed. United already is recovering the entire cost of this capacity through charges for lines currently in use.[6/] Obviously, revenues received on such plant are pure profit and should be recognized as such. No subsidy is warranted for second lines and United's motion should be dismissed on this point.[7/]

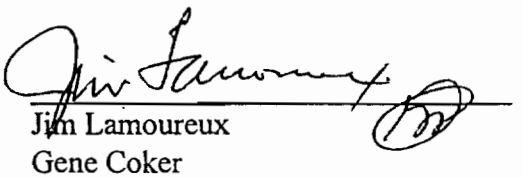
6/ The ILECs, in costing UNEs and universal service, assert that the cost of *all* spare capacity in the network must be born by existing customers even if they are not the intended users of this capacity. The ILECs therefore apply a utilization rate representing the spare capacity directly to the costs of the lines in use by existing customers so that all costs of spare capacity are reflected in the costs passed on to current users.

7/ United also argues, in the alternative, that it be allowed "pricing flexibility" with respect to "non-primary" lines. (United Mot. at 2.) Undoubtedly this means higher prices for Tennessee consumers. However, to the extent residential revenues exceed costs, this so-called "flexibility," while outside the scope of the Act, is just another way to extract higher profits from Tennessee consumers. Without meaningful competition to keep ILEC monopoly profits in check, the TRA must look closely at any such proposal.

CONCLUSION

Accordingly and based on the foregoing, AT&T respectfully requests that the TRA deny BellSouth's and United's Motions for Reconsideration.

Respectfully submitted,



Jim Lamoureux
Gene Coker
AT&T
1200 Peachtree Street, N.E.
Atlanta, Georgia 30309
(404) 810-4196

Attorneys for AT&T Communications
of the South Central States, Inc.

Dated: July 9, 1998

CERTIFICATE OF SERVICE

I, James P. Lamoureux, hereby certify that a true and exact copy of the foregoing has been served on counsel of record and other interested parties via First Class Mail postage prepaid, this 9th day of July, 1998.

James P. Lamoureux

Guy M. Hicks, Esq.
Attorney for BellSouth
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

H. Ladon Baltimore, Esq.
Attorney for LCI International Telecom
Farrar & Bates, L.L.P.
211 Seventh Avenue North
Suite 320
Nashville, TN 37219-1823

Jon Hastings, Esq.
Attorney for MCI
Boult Cummings, Conners & Berry
P. O. Box 198062
Nashville, Tennessee 37219

T. G. Pappas, Esq.
Coalition of Small LEC
Bass, Berry & Sims
2700 First American Center
313 Deaderick Street
Nashville, TN 37238-2700

Carolyn Tatum Roddy, Esq.
Attorney for Sprint
Sprint Communications Co., L.P.
3100 Cumberland Circle - N0802
Atlanta, Georgia 30339

Dana Shaffer, Esq.
Attorney for NEXTLINK
105 Molloy Street, Suite 300
Nashville, Tennessee 37201

Richard M. Tettlebaum, Esq.
Citizens Telecom
Suite 500
1400 16th Street, N.W.
Washington, DC 20036

Henry Walker, Esq.
Attorney for American Communications Services, Inc.
Boult, Cummings, Conners & Berry
P. O. Box 198062
Nashville, Tennessee 37219

Charles B. Welch, Jr., Esq.
Attorney for Time Warner, Inc.
Farris, Mathews, Gilman,, Branan & Hellen
511 Union Street, Suite 2400
Nashville, TN 37219

L. Vincent Williams, Esq.
Office of the Consumer Advocate
Cordell Hull Building, 2nd Floor
425 Fifth Avenue North
Nashville, Tennessee 37243-0500

James B. Wright, Esq.

United Telephone-Southeast, Inc. & Sprint Communications
14111 Capital Boulevard
Wake Forest, NC 27587-5900

Dana Frix, Esq.
AVR, L.P. d/b/a Hyperion of TN , L.P.
Swidler & Berlin, Chartered
3000 K Street, N.W., Ste 300
Washington, D.C. 20007

Guilford F. Thornton, Jr., Esq.
BellSouth Cellular Corp.
Stokes & Bartholomew
424 Church Street, 28th Floor
Nashville, TN 37219-2386

James W. Dempster, Esq.
Ben Lomand Rural Telephone
Cooperative, Inc.
118 East Main Street
P. O. Box 332
McMinnville, TN 37111-0332

Wayne Gassaway, Manager
DeKalb Telephone Cooperative, Inc.
P. O. Box 247
Alexandria, TN 37012

William C. Carriger, Esq.
TN Municipal Telecommunications Group
400 Krystal Building
One Union Square
Chattanooga, TN 37402

Dan H. Elrod, Esq. and
Kenneth M. Bryant, Esq.
GTE Mobil Net
Trabue, Sturdivant & DeWitt
511 Union Street, 25th Floor
Nashville, TN 37219

Fred L. Terry, General Manager
Highland Telephone Cooperative, Inc.
P. O. Box 119
Sunbright, TN 37872

F. Thomas Rowland, Manager
North Central Telephone Cooperative, Inc.
P. O. Box 70
Lafayette, TN 37083

D. Billye Sanders, Esq.
TCG MidSouth, Inc.
Waller, Lansden, Dortch & Davis
511 Union Street, Suite 2100
P. O. Box 198966
Nashville, TN 37219-8966

Glen G. Sears, General Manager
West Kentucky Rural Telephone
Cooperative Corp, Inc.
237 North 8th Street
Mayfield, KY 42066

W. T. Sims, Manager
Yorkville Telephone Cooperative
P. O. Box 8
Yorkville, TN 38389

Charlene Taylor (Chaz Taylor, Inc.)
ATTN: Sheila Davis
3401 West End Avenue, Suite 378
Nashville, TN 37203

Phoenix Network
ATTN: Denise Newman
1687 Cole Boulevard
Golden, Colorado 80401

Standard Communications Co.
ATTN: Richard S. Smith, President
302 Sunset Drive, Suite 101
Johnson City, TN 37604

State Department of Education
ATTN: Jane Walters
Commissioner
6th Floor, Gateway Plaza
710 James Robertson Parkway
Nashville, TN 37243-0375

State Department of Finance
and Administration

ATTN: Jack R. McFadden
Director
598 James Robertson Parkway
Nashville, TN 37243-0560

360° Communications Company
ATTN: Thomas J. Curran
Director External Affairs
8725 W. Higgins Road
Chicago, IL 60631

WorldCom
LaDon Baltimore, Esq.
Farrar & Bates, L.L.P.
211 Seventh Avenue, North, Suite 320
Nashville, TN 37219-1823