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November 9, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

Re: *United Telephone-Southeast, Inc. Tariffs to Reflect Proposed Changes Under Price Regulation Plan*
Docket No. 98-00626

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Response to Consumer Advocate Division's Petition for Rehearing. My signature was inadvertently omitted from Page 4 of Friday's filing. A copy of this letter only is being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

cc: All Parties

185295.v2

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *United Telephone-Southeast, Inc. Tariffs to Reflect Proposed Changes Under Price Regulation Plan*

Docket No. 98-00626

RESPONSE OF BELLSOUTH TELECOMMUNICATIONS, INC. TO CONSUMER ADVOCATE DIVISION'S PETITION FOR REHEARING

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Response to the Petition for Rehearing filed by the Consumer Advocate Division ("CAD"). Although the CAD's Petition attacks the findings of the Tennessee Regulatory Authority ("TRA") regarding both the payphone subsidy issue and the annual adjustment issue, this Response will only address the annual adjustment issue.[1]

Argument

Although the CAD alleges several "errors of fact" regarding the TRA's ruling on the annual adjustment issue, it cites no actual findings of fact that are allegedly erroneous. The CAD merely claims that the TRA misinterpreted the CAD's legal argument, (*Petition at 1, ¶1 & at p.8),* misinterpreted a statute; (*id, ¶3 & p.8*); or failed to consider certain legal or policy arguments propounded by the CAD. (*Id at 2, ¶¶5, 6, 7, 10, 12 13, 16 & p.8*). These alleged errors clearly are not related to any findings of fact.

Instead, each of these claims is related to the TRA's interpretation of T.C.A. § 65-5-209 and its application of that statute to the Stipulated Methodology as applied by United Telephone Southeast ("United") in this docket. As explained in BellSouth's Post-Hearing Brief (filed

[1] BellSouth understands that Sprint United will address both issues in its response to the CAD's Petition.

June 28, 1999) and as summarized below, the TRA's interpretation of T.C.A. § 65-5-209 is correct as a matter of law. The TRA, therefore, should deny the CAD's Petition for Rehearing.

1. The Plain Language of § 65-5-209 Forecloses the CAD's All-Encompassing "Use It Or Lose It" Argument.

Section 65-5-209(e) establishes the clear and concise general rule that United "may adjust its rates" for basic and non-basic services

> so long as its aggregate revenues for basic local telephone services or non-basic services generated by such charges do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan.

T.C.A. § 65-5-209(e) (emphasis added). United, therefore, "may" implement a rate increase or it "may" decide not to implement a rate increase in any given year. When it decides to implement a rate increase, United may charge rates that generate the aggregate revenues that would have been generated if United had taken advantage of the "maximum rates permitted" by the plan. Thus, in any given year, United may charge rates that generate the maximum aggregate revenues that would have been generated had United implemented each permissible rate increase in each year of its plan.

Under this general rule, United may accumulate "headroom" by deferring rate increases to which it is entitled to later years, and it may utilize this accumulated headroom by adjusting its basic and/or non-basic rates. In fact, the legislature clearly limited the only exception to this general rule to residential basic service. Section 65-5-209(f) provides that after the expiration of the four-year freeze on the rates for basic services, United

> is permitted to adjust annually its rates for basic local exchange telephone services in accordance with the method set forth in subsection (e) provided that in no event shall the rate for residential basic local exchange telephone service be increased in any one (1) year by more than the change in inflation from the preceding year.

T.C.A. § 65-5-209(f)(emphasis added). Thus, while United's ability to raise basic residential rates is limited by the change in inflation from the preceding year, there is no "year-over-year"

limitation on rate increases for basic business services or non-basic services. In light of this straightforward legislative mandate that the "year-over-year" limitation applies only to rates for basic residential services, the CAD's "use it or lose it" argument in this docket is little more than an improper attempt to have the exception swallow the rule.[2]

2. Sound Public Policy Forecloses the CAD's "Use It Or Lose It" Argument.

The CAD's Petition ignores the fact that allowing a company to defer a permitted price increase to a later time benefits consumers because price adjustments are made on a prospective basis. If a price-regulated company was permitted under the Stipulated Methodology to increase rates one percent per year in three successive years, a consumer would pay less assuming one aggregate increase during the third year than he would assuming a one-percent increase during each of the three years. Under either scenario, the consumer would pay the same rates in the third year. If the company increased its rates by one percent each year, however, the consumer would pay more during the first and second years than he would if the company implemented one aggregate increase during the third year. Thus, in addition to the plain language of the statute, sound public policy also supports the TRA's interpretation of T.C.A. § 65-5-209.

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[2] In discussing the rules of statutory construction, the CAD's Petition conveniently ignores the plain fact that if § 65-5-209(e) incorporated the "year-over-year" limitation (as the CAD erroneously argues it does), the provision in § 65-5-209(f) creating an exception to the "method set forth in subsection (e)" would be meaningless and unnecessary. A "year-over-year" limitation cannot be read into § 65-5-209(e), therefore, because basic principles of statutory construction prohibit a construction of a statute that renders words in the statute meaningless or unnecessary. *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn. App. 1995) (holding that "court has duty to construe statutes so that no part will be inoperative, superfluous, void or insignificant."). United, therefore, may accumulate headroom from both basic and non-basic services, and the price regulation statutes do not limit its ability to utilize its aggregate accumulated headroom to increase rates for basic business services or for non-basic services.

CONCLUSION

For the reasons stated above, the TRA should deny the CAD's Petition for Rehearing.

Respectfully submitted,

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