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June 7, 1999

VIA HAND DELIVERY

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

Re: *Application of BellSouth BSE, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services*
Docket No. 98-00879

Dear Mr. Waddell:

Enclosed for filing are the original and thirteen copies of the Brief of AT&T Communications of the South Central States, Inc. Opposing Granting of Application. A copy of the Brief has been served upon parties of record.

Yours very truly,

Val Sanford

VS/ghc
Enclosure

cc: Counsel of Record
James P. Lamoureux, Esq.
Garry Sharp

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: **Application of BellSouth BSE, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services.**

Docket No: 98-00879

BRIEF OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. OPPOSING GRANTING OF APPLICATION

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June 7, 1999

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In Re:	**Application of BellSouth BSE, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Telecommunications Services.**
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BRIEF OF AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC. OPPOSING GRANTING OF APPLICATION

AT&T Communications of the South Central States, Inc. ("AT&T") opposes the granting of this application by which BellSouth Corporation ("BellSouth") seeks to do through its newly created subsidiary, BellSouth BSE, Inc. ("BSE") what it cannot, or chooses not to, do through its old, basic subsidiary BellSouth Telecommunications, Inc. ("BST").[1] Regulatory decisions in this State are to be based on economic reality, not on legal forms adopted to circumvent regulatory limitations and policies. The most basic regulatory tool is the control of entry. Thus, the issue here is not how to develop a regulatory system to accommodate the wishes of BellSouth, but rather whether, under Tennessee law and the proof in this record, BSE should be granted a certificate of public convenience and necessity as a "competing telecommunications service provider"

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[1] The very names of these various corporate entities demonstrate the dominance of BellSouth Corporation, the integral nature of the BellSouth economic entity and the confusion in keeping these entities apart. For example, Mr. Scheye testified that he is the President and Vice President of BSE, and also, at page 89, "since I am still employed by BellSouth."

when as a matter of economic reality it is not "competing" but rather is a "cooperating telecommunications service provider." — a CoLEC not a CLEC.[2]

This application, and the proof in the record, raise fundamental issues of regulatory policy under Tennessee law and it is on those issues that this application should be denied.

I. A CORPORATE FORM OF ORGANIZATION CHOSEN BY A BUSINESS IN THE CONTEXT OF REGULATORY POLICY DOES NOT CONTROL THE IMPLEMENTATION OF REGULATORY POLICY.

It must be remembered that corporations are creatures of the state. Chief Justice Marshall gave the classic description of the corporation, "an artificial being, invisible, intangible, and existing only in contemplation of law"; Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 636 4 L.Ed. 629 (1819). Courts have consistently refused to give effect to the corporate form when it is interposed to defeat legislative policies; First National City Bank v. Banco Para El Comercio, 462 U.S. 611, 630, 103 S.Ct. 2591, 2601, 77 L.Ed.2d 46 (1983); Anderson v. Abbott, 321 U.S. 349, 362-63, 64 S.Ct. 531, 88 L.Ed. 793 (1944). Likewise, the Tennessee Supreme Court has held that a regulatory agency such as the Tennessee Public Service Commission is not bound to observe corporate charters or the form of corporate structure in implementing regulatory policies; Tennessee Public Service Commission v. Nashville Gas Co., 551 S.W.2d 315, 319 (1977). As the foregoing cases reflect, the implementation of regulatory policy is to be based on economic reality, not legal fictions.

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[2] This is not an issue of abstract policy. Decisions made by other agencies, under other laws, on the proof in other records are of limited relevance.

II. THE REGULATORY POLICIES LIMITING THE ACTIVITIES OF BELL OPERATING COMPANIES, SUCH AS BST, AND REGIONAL BELL OPERATING COMPANIES, SUCH AS BELLSOUTH, ARE BASED ON THEIR EFFECTIVE MONOPOLY CONTROL OF ACCESS TO THE LOCAL EXCHANGE TELEPHONE MARKET.

The basic limitations on the activities permitted the Bell Operating Companies were imposed in the antitrust case that resulted in the divestiture of those companies from the Bell System; and the Regional Bell Operating Companies were created pursuant to the plan of reorganization adopted to carry out that decision; United States v. American Tel. & Tel. Co., 552 F.Supp. 131 (D.D.C. 1982); United States v. Western Electric Co., 569 F.Supp. 990 (D.D.C. 1983); and United States v. Western Electric Co., 569 F.Supp. 1057 (D.D.C. 1983). As the Court repeatedly emphasized in those decisions the basis of those restrictions was the effective monopoly power the Bell Operating Companies had over access to the local exchange market; *see*, e.g., 552 F.Supp. at 223, "The key to the Bell System's power to impede competition has been its control of local telephone service."

As this Authority well knows, while competition in the local exchange market in Tennessee has begun to develop, BST still retains that key power in the 80% of the Tennessee market which it serves.

III. THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 PROVIDED THE MEANS FOR BELL OPERATING COMPANIES TO BE RELIEVED OF THE RESTRICTIONS IMPOSED BY THE FEDERAL COURT; BUT DID NOT PROVIDE A BASIS FOR GRANTING THIS APPLICATION.

First, §601 provided that the restrictions imposed by the Federal Court were lifted and replaced by the restrictions of the Federal Act. Second, §§271-276, entitled

"Special Provisions Concerning Bell Operating Companies" imposed renewed line-of-business restrictions on the Bell Operating Companies. In summary, under §271, each Bell Operating company must obtain prior authorization from the FCC before providing non-incidental long distance service to customers within the states in which the Bell Operating Company was allowed to provide local service prior to the enactment of the Act ("in-region long distance service"). The FCC is to grant authorization basically only after the establishment of the 14 point checklist evidencing the presence of competition in the particular local service market. Even then, however, the Bell Operating Company may initially only provide long distance service through a separate affiliate as provided in §272. The Bell Operating Companies are permitted to provide incidental long distance service and long distance service to customers located out-of-region without significant limitation or prior authorization.

Under §273, the Bell Operating Companies may not manufacture or provide telecommunications equipment until they have met the requirements for non-incidental, in-region long distance service in §271(d), and, once again, even then only through a separate affiliate for an interim period.

Finally, under §§274 and 275, the Bell Operating Companies may not provide electronic publishing or alarm monitoring services for a specified period, unless they do so by way of a separate affiliate or joint venture and in the case of alarm monitoring, only if they are engaged in the business prior to November 30, 1995.

Note that the separate affiliate provisions are specifically tailored to meet the particular circumstances and needs of the specific activities covered thereby.

In addition, §706 authorized and directed the FCC and the State Commissions to encourage the development of "advanced telecommunications capability" to all Americans, including particularly elementary and secondary schools. Again, the means of carrying out that objective are to be tailored specifically to meet that policy objective.

The separate affiliates envisioned by the Federal Act for specific statutory purposes provide no basis for granting this application. BSE does not purport to be such a statutory separate affiliate and by this application it is not seeking authority for such specific activities.

IV. THE GRANTING OF THIS APPLICATION WOULD BE CONTRARY TO THE BASIC POLICY OF THE TENNESSEE STATUTE.

A. The Basic Policy Of The Tennessee Statute Was To Provide For The Transition From The Then Existing Monopoly Regulation Of The Larger Incumbent Local Exchange Telephone Companies, Such As BST, Through Competition With Such Incumbents.

T.C.A. §65-4-123 declares the basic telecommunications services policy of the State:

> The general assembly declares that the policy of this state is to foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. To that end, the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider; universal service shall be maintained; and rates charged to residential customers for essential telecommunications services shall remain affordable.

That policy of "permitting competition in all telecommunications services markets" is a fundamental goal; and the provisions of the statutes regulating telecommunications are to be construed to effectuate that goal. To that end, the statute governing entry is specifically designed to permit competition to develop in local exchange markets then under the effective monopoly of the incumbent local exchange telephone companies by authorizing the granting of certificates of public convenience and necessity to "competing telecommunications service providers." Thus, T.C.A. §65-4-201(c) provides:

> (c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:
>
> (1) The applicant has demonstrated that it will adhere to all applicable authority policies, rules and orders; and
>
> (2) The applicant possesses sufficient managerial, financial and technical abilities to provide the applied for services.
>
> An authority order, including appropriate findings of fact and conclusions of law, denying or approving, with or without modification, an application for certification of a competing telecommunications service provider shall be entered no more than sixty (60) days from the filing of the application.

The basic idea expressed in this provision is that the monopoly enjoyed by the incumbent local exchange company will come to an end by means of competition by other providers with that incumbent. Note that notice is expressly required to be given

"to the incumbent local exchange telephone company." The statute does not contemplate, much less authorize, the granting of certificates to providers who will not be competing with the incumbent but rather will be a coordinated arm of the same economic entity as the incumbent, with the purpose of supplementing the services of that incumbent. The granting of such a certificate would not detract from the monopoly power of the incumbent – the purpose of the statute – but rather would tend to enhance that monopoly power by affording another vehicle by which the economic entity represented by that incumbent could circumvent restrictions on that incumbent and could engage in activities which that incumbent for whatever reason did not or could not engage.

In short, the statute envisions, and provides for, competition by the new provider with the incumbent, not for a provider which will support that incumbent and tend to preserve the monopoly power of that incumbent. "Competing telecommunications service provider" means competing with the incumbent local exchange telephone company not cooperating with that incumbent – a CLEC not a CoLEC.

B. BSE Does Not Propose To Operate As A Competing Telecommunications Service Provider In Competition With The Incumbent BST.

1. BSE's Application shows its total dependence on BellSouth and its position as an integral part of the BellSouth economic entity.

In the prior BSE proceeding, it was granted authority as a CLEC in the territory served by incumbent local exchange telephone companies open to competition under the Tennessee statute, but not in the territory served by BST. By this application, BSE

seeks authority to serve the same territory as is served by its affiliate BST. Thus, BST is the only incumbent local exchange telephone company affected by this application. The application itself demonstrates the integral connection between BSE, BST and BellSouth, as a single economic entity.

The application does not state any particular business plan for BSE's operations in providing local exchange service. It states, at page 12, that BSE "may augment its service offerings in the future and add new services and capabilities as they become available from the Incumbent Local Exchange Carriers" (emphasis added), which here means from BST. The application then states, at page 13:

> Initially the Company plans to operate as a reseller of such services, (i.e., BST's services) but may subsequently operate as a facilities-based local exchange provider. In addition, the Applicant may use unbundled network elements (UNEs) i.e., (BST's UNEs) to provide service. Therefore, it seeks certification as a facilities-based competitor.

In stating its qualifications, BSE relies on the experience of its affiliates, stating at page 14, "As noted above, Applicant's affiliates have vast experience in the provision of telecommunications service throughout the United States and abroad. In the southeastern United States, at the end of 1997, BellSouth affiliates had over 22 million local exchange service lines, making it one of the largest providers of local exchange service in the United States." In demonstrating its financial fitness, BSE relies solely on the general financial power of BellSouth, at pages 14-15: "Given its start-up nature, the Company will rely upon the financial qualifications of its ultimate parent, BellSouth."

However, no express commitment from BellSouth is shown.

In demonstrating its technical fitness, BSE again relies on BellSouth, stating at page 15: "Drawing upon support as necessary and appropriate from its parent, BellSouth, as noted above, the Company possesses the requisite level of telecommunications expertise and is technically qualified to provide local exchange telecommunications service in Tennessee."

The application does not show that BSE will function in competition with BST. On the contrary, it shows that BSE is totally dependent on the BellSouth economic entity, including BST; and is to function, not in competition with BST, but to offer "packages" of services, including those of BST and other BellSouth affiliates; see page 16.

2. The testimony of the BSE witness Scheye further demonstrates that BSE is not to function as an independent competitor of BST; but rather as a means by which BellSouth, through BSE, will package the services of BST and its other subsidiaries.

(a) The "Business Plan" of BSE

Mr. Scheye testified that in 1996 and 1997 Andersen Consulting prepared a comprehensive, detailed plan for the organization, development and functioning of BSE (Tr., p. 100); or it was something "at the time that BellSouth corporate wanted an organization to pursue" (Tr., p. 107). However, "it was BellSouth's decision not to go forward with it" (Tr., p. 103). Then, at pages 108-109, Mr. Scheye testified:

> A. The only business plan that's documented is our work plan in conjunction with BellSouth Cellular for Tampa where it wasn't really a business plan, it was a work to initiate service initially beginning – I guess that work plan started about February or March of 1998, initially with the conclusion of September, middle of September of 1998 which was pushed a month to October. So it was basically a work

plan that we developed in conjunction with our cellular people to develop the package. But it wasn't a study of this sort.

Q. So you're saying there's no overall business plan for BSE then, there's only this plan that exists for this particular service offering that you have going to Tampa?

A. No. Our overall business plan, as I have testified to, is to offer packages in and outside the region and to serve customers who have multistate needs, both residents, but they're predominately small businesses who have a need across multiple states. That's the basic business plan.

What we do, the way we develop that or evolve that is as we see an opportunity, we work either by ourselves or with another part of BellSouth for example, cellular, to develop a specific work plan for that particular market. It's a much more efficient and I must say less expensive way of operating.

Q. But there's no documentation of any overall BSE business plan other than whatever documentation there might be for this offering you-all have done in Tampa; is that right?

A. Yes, that's correct.

Director Greer asked and Mr. Scheye answered, at pages 124-125:

DIRECTOR GREER: My question to you then, Mr. Scheye, is you're telling me a company as big as BellSouth formed a subsidiary with no business plan?

THE WITNESS: No. We have a business plan. We have a business plan that we're operating in Tampa, Florida, right now. I don't have any specific documents that outline a long-term business plan. As my testimony said here in our application, we have a concept that we're currently operating successfully in Tampa which is to provide residents and small business a package of services. We plan to expand that capability into other locations.

> We also have a concept that we have not yet initiated which is to provide business customers who have a multistate need and requirement, that capability across states that are within and beyond the BellSouth region. That's the concepts we've had. We have not – the only one we've actually implemented in terms of business is Tampa, Florida, right now.
>
> DIRECTOR GREER: So you spent all this money on the Andersen Consulting Report, rejected all or parts of it, but never developed another written business plan?
>
> THE WITNESS: That's correct.

(b) <u>BSE has no truly separate identity, but is a mere instrumentality of BellSouth, which is the real applicant in this case</u>

BSE is totally dependent on BellSouth. As the foregoing testimony of Mr. Scheye shows, BellSouth decides what business plan BSE will follow.

The most telling testimony was given by Mr. Scheye in response to questions from Ms. Berlin, at pages 212-213:

> Q. I'm going to ask you to turn to another page in a minute. But who do you report to, Mr. Scheye?
>
> A. Who do I report to? Mr. Capell.
>
> Q. And who is that?
>
> A. He's in BellSouth Corporation. Has, amongst other things, some of the newer ventures including ourselves and some potential data ventures.
>
> Q. If there ever arose a dispute between yourself and BST, say as to who would enter the Lexington market first, for example, would he be the one that would resolve that dispute?
>
> A. Hard to say. He would certainly be a part of it. Somebody at BellSouth Corporation would make that decision.

Mr. Scheye does not report to the Board of Directors of BSE, or even to the Board of Directors of BellSouth. He reports to "Mr. Capell" who is "in BellSouth Corporation." BSE will not decide what markets it will enter. Somebody at BellSouth Corporation will make those decisions.

Certainly, in packaging the services of BST and other BellSouth subsidiaries, BSE will coordinate its efforts with them. The following exchange between Chairman Malone and Mr. Scheye is illustrative, at page 210:

> CHAIRMAN MALONE: I think your question – and, Ms. Berlin, you can certainly answer it better than I – she was talking about the ability of BST and BSE to talk and so forth and so on and whether or not that could happen, that there was nothing that could prohibit that from happening. Now, whether there might be something on paper, I think Ms. Berlin's question was could that happen. Is that correct?
>
> MS. BERLIN: Yes
>
> THE WITNESS: And I think my answer was, yes, it could happen and, yes, it could be proper.

In short, BSE will cooperate, not compete, with BST and other BellSouth subsidiaries, and it will do so, not as a separate entity, but as a mere instrumentality of BellSouth.[3]

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[3] Aside from regulatory policy cases, separate corporate identity may be disregarded where a subsidiary is a mere "instrumentality" of its parent, Electric Power Board of Chattanooga v. St. Joseph Valley Structural Steel Corp., 691 S.W.2d 522, 526 (Tenn. 1985).

V. THERE IS NO BASIS IN LAW, POLICY OR FACT FOR SPECULATING AS TO A REGULATORY SYSTEM THAT WOULD ACCOMODATE BELLSOUTH AND ITS INSTRUMENTALITY BSE.

As previously discussed, the issue in this case is whether under Tennessee law and the proof in this record, BSE has demonstrated that it should be granted a certificate of public convenience and necessity to operate as a competing telecommunications service provider, a CLEC, in the territory served by its affiliate BST. BSE has not made that demonstration. Its application should be denied. There is no basis for the TRA to speculate concerning what sort of regulatory system might be appropriate for BSE if it had made that demonstration.

It is a familiar tool of regulatory law to require that specific categories of operations or services should be provided solely through a separate subsidiary or affiliate, defining the specific policies involved and the specific conditions and limitations on such a subsidiary or affiliate. For example, the separate affiliate requirement in §272 of the Federal Act is designed to meet the specific circumstances arising from the provision of the specific services stated therein.

In this case, however, no legal authority, no statute or order, authorizes the creation and operation of such a separate subsidiary or affiliate. Indeed, the concept of a separate subsidiary in this case does not arise out of any statute, rule or other expression of legislative policy, but arises only out of the desires of BellSouth. Assuming, however, that the TRA has the statutory power[4] to authorize the creation

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[4] The TRA has only those powers authorized by statute, either expressly or by necessary implication; Tennessee-Carolina Transp., Inc. v. Pentecost, 206 Tenn. 551, 556, 334 S.W.2d 950 (1960).

and operation of such a separate subsidiary in the circumstances of this case, nevertheless, there is no basis in the record in this case justifying such action.

The basic problem here is the open-ended, vague and speculative nature of the operations BSE would or could undertake should its application be granted. No one knows what operations BSE will actually undertake or what services it will provide – or if someone at BellSouth knows, they did not see fit to provide that information in this record.

Certainly, BSE is not proposing to limit its operations and the services it will provide to include only those operations and services stated by Mr. Scheye as its present business plan.

Under these circumstances, it is not feasible to speculate about what BellSouth might decide it wants BSE to do, and on that basis to attempt to develop a regulatory system for BSE appropriate for whatever operations or services that BellSouth may at sometime decide for BSE to perform and offer. Regulatory decisions cannot properly be based on such sheer speculation.

To be sure, Mr. Scheye stated that BSE will accept conditions concerning the price floor and contract service arrangements (Tr., p. 28), and various other conditions as stated during the course of his testimony. To sum it up, Mr. Scheye testified, at page 157, "I am willing to abide by whatever rules the TRA thinks are necessary to allow me to go into business." However, the problem is that since BSE has not proposed specific operations and services, there is no basis for determining what specific regulatory policies would be appropriate.

On it's face, the application of BSE is far different from the applications of a truly competitive "competing telecommunications service provider"; and it is likewise far different from that of a separate subsidiary or affiliate required pursuant to statute or other regulatory policy to accomplish some specific purpose. Here BellSouth – the real decision maker here – is asking this Authority to grant BSE a certificate of public convenience and necessity as a competing telecommunications service provider, when BSE does not propose to actually compete with BST and in fact has no defined scope of operations.

In short, in view of the unique circumstances of this application, if BSE wanted the TRA to develop a regulatory system appropriate for such unique circumstances, the burden was on BSE to provide the factual basis for any such system. BSE has not even attempted to meet that burden. It is not up the TRA or the intervenors to speculate about what BSE may actually do and attempt to fashion a regulatory system based on such speculation. Of course, Mr. Scheye stated that he would comply with the law. As to that, the choice is not his. As Director Kyle stated, the law is the law.

The law, and the regulatory policies based on the law, dictate that the application of BSE, based, as it is, on sheer speculation, should be denied.

VI. THE PRIOR ORDER OF THE TRA GRANTING IN PART AND DENYING IN PART BSE'S PRIOR APPLICATION PROVIDES NO BASIS FOR GRANTING THIS APPLICATION.

This is the second application filed by BSE. In its Order dated December 8, 1998 on that first application, the TRA concluded:

> BellSouth BSE, Inc.'s Application for a Certificate of Public Convenience and Necessity pursuant to T.C.A. 65-4-101 is hereby granted only to the extent that BSE shall be allowed to provide competing local exchange service within Tennessee in those service areas outside of BellSouth Telecommunications, Inc.'s current service area, and not otherwise inconsistent with state and federal law and the rules and orders of the TRA and the FCC. BSE's Application is otherwise denied.

Director Kyle filed a concurring opinion, concurring in the result.

In support of its conclusion to deny that part of BSE's application concerning operations in territories served by BST, the Order concluded that granting such authority "does not promote the public interest." The Order states the basis for that conclusion, at page 13:

> Recognizing the high potential for anti-competitive behavior, the Authority must consider the swiftness with which any improper behavior would be discovered, and how quickly such behavior, if discovered, could be remedied. Additionally, we are concerned with the impact that any anti-competitive behavior could have on competitors and on the public. If abuses go undetected for only a short period, one might think that the potential for lasting harm must necessarily be small. But, that may not necessarily be the case. The Authority concludes that the potential for anti-competitive behavior between BSE and BellSouth Telecommunications is great, and that such anti-competitive behavior, when engaged in, is likely to be undertaken stealthily so as to increase its potential for going permanently undiscovered. Unfortunately, neither the Authority's independent powers to investigate nor the ability of competitors to complain of suspect activities can be hailed as a timely and effective means of monitoring actual anti-competitive activity between BSE and BellSouth Telecommunications. The negative consequences to Tennessee consumers of anti-competitive behavior among BSE and BellSouth Telecommunication is too great to leave to chance.

> BSE contends that the anti-competitive arguments of the intervenors are speculative and undefined. If that is the case, then likewise BSE's position on how competitively neutral its business activities with BellSouth Telecommunications will be is equally speculative. In any event, T.C.A. §65-5-208(c) requires the Authority to prospectively assess BSE's Application. Moreover, the Authority does not find it necessary to list each possibility for abuse by BSE. It is sufficient to acknowledge that even a small misstep can be fatal to the goal of competition.

Nothing meaningful was offered by BSE showing that there has been any change in the speculative nature of BSE's activities, or that there should be any change in the TRA's conclusions. Mr. Scheye's statements as to BSE's willingness to comply with the law, as discussed above, changed nothing. Each possibility of abuse cannot conceivably be listed, much less guarded against. Since neither Mr. Scheye, nor so far as this record shows, anyone else, has any reasonably clear plan for BSE's operations, there is no basis in the record to support designing a regulatory system to protect the public interest concerning such unknown activities.

Footnote 16 of the Order at page 17, stated:

> Chairman Malone instructed BSE that this matter is not closed to reconsideration in the future, stating: "[I]f BSE believes at a later time that it can carry the public interest burden herein raised and alleviate the agency's concerns with respect to T.C.A. §65-5-208(c), it may petition the Authority at any time at its discretion for further authority." *Transcript of Authority Conference, September 15, 1998 at 18-19.*

Nothing in this record eliminates the "concerns" expressed in the Order.

Mr. Scheye in his testimony did modify his previous testimony to the extent of expressing a willingness for BSE to be bound by certain provisions applicable to BST. Indeed, Mr. Scheye stated, at page 157, that "I am willing to abide by whatever rules

the TRA thinks are necessary to allow me to go into business." However, Mr. Scheye did not state what business BSE would go into – beyond the initial packaging of services – and BSE's application is not limited to that.

Indeed, Mr. Scheye's testimony demonstrates conclusively the plain fact, that BellSouth, through BSE, is asking this Authority to grant it broad authority, opening the way for unknowable and unforeseeable anti-competitive practices, and providing no basis by which the TRA could establish a regulatory system to prevent such practices.

Moreover, as discussed above, the issue here is not how to design a regulatory system to accommodate the wishes of BellSouth; rather the issue is whether under Tennessee law and the proof in this record, BSE has demonstrated that it should be granted a certificate of public convenience and necessity to operate as a competing telecommunications service provider, when the proof shows it will not be competing with the incumbent BST, but rather will be cooperating to further the interest and policies of their mutual parent BellSouth – by what means and in what manner remains undisclosed.

The intervenors are not attempting to "raise the bar." BSE's shifting positions have been met. The same statutory bar remains – BellSouth cannot be allowed to use the authority of a "competing telecommunications service provider" – a means for fostering competition with its monopoly provider BST – to go into business for the purpose of cooperating, not competing, with BST.

CONCLUSION

As a matter of Tennessee law, and of sound policy based on that law, the proof in the record in this case does not support granting a certificate of public convenience and necessity as a competing telecommunications service provider to BSE. The Application should be denied.

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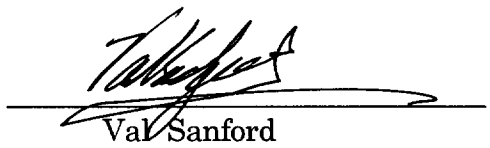
CERTIFICATE OF SERVICE

I, Val Sanford, hereby certify that a copy of the foregoing Brief of AT&T Communications of the South Central States, Inc. has been served on the following parties of record at the addresses shown by depositing a copy of the same in the U. S. First Class Mail, postage paid, this 7th day of June, 1999.



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