

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 25, 2000

IN RE:)	
TARIFF FILING BY BELL SOUTH)	DOCKET NO.
TELECOMMUNICATIONS, INC. TO)	00-00041
REDUCE GROUPING RATES IN RATE)	
GROUP 5 AND IMPLEMENT A 3)	
PERCENT LATE PAYMENT CHARGE)	

**ORDER GRANTING RECONSIDERATION AND HOLDING SECOND
PETITION FOR STAY OF EFFECTIVENESS IN ABEYANCE**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on August 29, 2000 upon the filing by the Consumer Advocate Division of the Office of the Attorney General and Reporter ("Consumer Advocate") of a *Second Petition for Stay of Effectiveness and Petition for Reconsideration* of the Authority's August 3, 2000 *Order Reversing Initial Order and Approving Tariff*. The tariff in this matter had originally been filed by BellSouth Telecommunications, Inc. ("BellSouth") on January 21, 2000. The relevant facts and procedural history are as follows.

On July 3, 2000, the Pre-Hearing Officer entered the *Initial Order Relative to Objection to Second Report and Recommendation* ("Initial Order"). The *Initial Order* set forth the two prime issues agreed to by the parties as follows:

1. Does the late payment charge proposed in BellSouth's Tariff 00-00041 constitute an impermissible rate increase for basic local exchange service under Tenn. Code Ann. § 65-5-209?

2. When BellSouth bills for services on behalf of other telecommunications companies does it have a right, independent of its agreement with the telecommunications companies for which it bills, to charge its proposed late payment charge to the consumer, in the event a consumer pays the bill late?

In the *Initial Order*, the Pre-Hearing Officer determined by statutory interpretation, that BellSouth's late payment tariff, as a matter of law, constituted both a telecommunications service and a charge for such service. The Pre-Hearing Officer further concluded that when such a charge is applied to any underlying basic telecommunications service, it would be an unlawful rate increase. Although the Pre-Hearing Officer did not explicitly grant or deny the tariff, the only conclusion which could flow from this determination was the denial of the tariff. Because of this result, the Pre-Hearing Officer did not address the second prime issue in the *Initial Order*.

The Authority considered the *Initial Order* during the July 11, 2000 Authority Conference. At that time, the Authority heard the parties' arguments and comments from the Pre-Hearing Officer. Thereafter, the Directors deliberated and a majority¹ concluded that, as to the first prime issue, the late payment charge provided for in the tariff was a non-basic telecommunications service, and any such charge would be acceptable provided that it was revenue neutral pursuant to BellSouth's price cap plan. The majority then resolved the second prime issue by concluding that BellSouth is not prohibited from billing and collecting the late payment charge to customers when it bills customers on behalf of other telecommunications service providers. After reaching these conclusions, the majority voted to approve the tariff.²

¹ Director Malone did not vote with the majority and filed his dissent on August 29, 2000.

² The actions of the Authority are reflected in its *Order Reversing Initial Order and Approving Tariff* issued August 3, 2000.

On July 26, 2000, the Consumer Advocate filed a *Petition for Stay of Effectiveness* of the July 11, 2000 oral decision of the Authority. Thereafter, the Authority entered its written order on August 3, 2000 approving the tariff. The Consumer Advocate then filed a *Second Petition for Stay of Effectiveness and Petition for Reconsideration* of the written order on August 10, 2000.³ BellSouth responded to the Consumer Advocate's first petition on August 14, 2000. The Consumer Advocate filed its *Reply to BellSouth's Response to Tennessee Consumers' Second Petition for Stay of Effectiveness and Petition for Reconsideration* on August 21, 2000.⁴ BellSouth filed its *Response to Consumer Advocate Division's Second Petition for Stay of Effectiveness and Petition for Reconsideration* on August 22, 2000, and the Consumer Advocate filed its reply on August 23, 2000.

During discussions with the parties at the August 29, 2000 Authority Conference, the parties differed regarding whether the Authority's decisions to reject the *Initial Order* and approve the tariff necessarily involved the resolution of disputed issues of fact. BellSouth argued that any facts material to the two prime issues were undisputed and therefore, these issues could be decided as a matter of law. The Consumer Advocate argued that several facts were in dispute and further discovery and a hearing would be required to resolve this matter. When asked to enumerate the disputed facts, the Consumer Advocate was not able to list every disputed fact at that time.

Upon consideration of the filings and arguments of the parties in this matter, the Directors determined that there was sufficient cause to reconsider the Order of August 3,

³ The Consumer Advocate's *Petition for Stay of Effectiveness* of the oral decision was not acted on due to the issuance of the August 3, 2000 Order and the Consumer Advocate's second filing.

⁴ The Consumer Advocate's reply was premature or misdirected in that BellSouth had not yet responded to the Consumer Advocate's *Second Petition for Stay of Effectiveness and Petition for Reconsideration*.

2000. Pursuant to Tenn. Code Ann. § 4-5-317,⁵ the Consumer Advocate's *Petition for Reconsideration* is granted and this matter is set for further proceedings to be determined at a future Authority Conference.

Furthermore, because BellSouth assured the Directors during the August 29th Conference that the tariff would not be placed into effect until October 1, 2000, a majority of the Directors voted to hold the *Second Petition for Stay of Effectiveness* in abeyance.⁶

⁵ The pertinent subsections of Tenn. Code Ann. § 4-5-317 provide as follows:

(c) The person or persons who rendered the initial or final order, which is subject of the petition, shall, within twenty (20) days of receiving the petition, enter a written order either denying the petition, granting the petition and setting the matter for further proceedings; or granting the petition and issuing a new order, initial or final, in accordance with § 4-5-314. . . .

(d) An order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings, which shall be limited to argument upon the existing record, and no new evidence shall be introduced unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding.

(e) The sixty-day period for a party to file a petition for review of a final order shall be tolled by granting the petition and setting the matter for further proceedings, and a new sixty-day period shall start to run upon disposition of the petition for reconsideration by issuance of a final order by the agency.

Notwithstanding the provisions in subsection (c) above that "a written order" be entered within twenty (20) days of the filing of a *Petition for Reconsideration*, the Authority acted on the Consumer Advocate's petition and rendered its decision on the record (see Tenn. Code Ann. § 65-2-112) "granting the petition" thereby tolling the time period for review as set forth in Tenn. Code Ann. § 4-5-317(e).

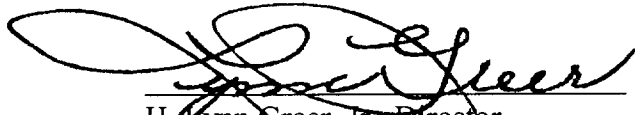
⁶ Director Malone voted in favor of reconsideration and against the motion to hold the *Second Petition for Stay of Effectiveness* in abeyance. Director Malone instead moved to grant the petition for stay.

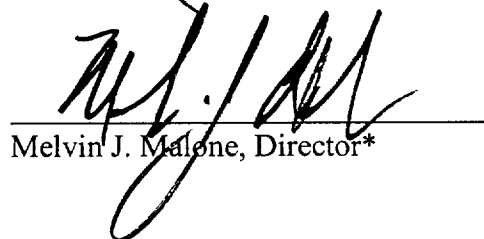
IT IS THEREFORE ORDERED THAT:

1. The *Petition for Reconsideration* is granted; however, the Directors will address the merits of the reconsideration at a later date.

2. The *Second Petition for Stay of Effectiveness* is held in abeyance until September 26, 2000 unless otherwise ordered.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director*

ATTEST:


K. David Waddell, Executive Secretary

* Director Malone voted in favor of reconsideration and against the motion to hold the *Second Petition for Stay of Effectiveness* in abeyance. While he concurs with the result regarding the *Petition for Reconsideration*, Director Malone does not agree completely with the relevant facts and procedural history as set forth herein.