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REGULATORY AUTH.



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OFFICE OF THE
EXECUTIVE SECRETARY

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RECEIVED

AUG 25 2000

August 25, 2000

TN REGULATORY AUTHORITY
GENERAL COUNSEL'S OFFICE

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

RE: Tariff Filing of BellSouth Telecommunications, Inc. for CSA TN99-1533-02
Docket 00-00677

Dear Mr. Waddell:

Attached is BellSouth's response to the Staff's data request dated August 18, 2000.

We trust that this information will address the Staff's questions regarding this tariff filing, and we would appreciate your efforts to place this item before the Tennessee Regulatory Authority Directors at the earliest possible date.

Please contact Paul Stinson at 214-3839 if there are any questions regarding this response or if any additional information is required.

Yours truly,

A handwritten signature in cursive script that reads "Charlie Howorth".

Charles L. Howorth, Jr.

Attachment

BellSouth Telecommunications, Inc.
Tariff No. 00-00677
TRA Data Request
August 18, 2000
Item No. 1

REQUEST: Is it BellSouth's position that termination charges are not within the jurisdiction of the Tennessee Regulatory Authority?

RESPONSE: The Tennessee Regulatory Authority has jurisdiction to review and approve CSAs, including termination provisions appearing in CSAs.

REQUEST: Do the terms and conditions of the contract permit and/or require the determination of termination charges by an arbitrator not affiliated with the Tennessee Regulatory Authority?

RESPONSE: No. As noted above, the TRA has jurisdiction to review and approve CSAs, and the arbitration provision of the contract expressly states that "This [arbitration] provision shall not apply to issues that are within the primary jurisdiction of the state regulatory authority." See Page 14. The arbitration provision, therefore, does nothing whatsoever to alter the TRA's authority to review and approve the termination provision of the CSA. See *Wachtel v. Shoney's Inc.*, 830 S.W.2d 905, 908 (Tenn. Ct. App. 1992)("When the parties enter into a binding arbitration agreement, they are essentially entering into a contract and the contours of the arbitrators' authority in a given case are set by the arbitration agreement.").

These termination charges are clearly spelled out on page 15 and 16 of this CSA. First, any termination language in the earlier CSA is extinguished by the provision at page 12 which states that "All Notes in CSA TN97-3836-00 are deleted, replaced with, and superseded by the following notes." Next, the "Termination Liability Charges" provision on pages 15 and 16 expressly states that "Customer and BellSouth agree that Paragraph 7 of the Contract Service Arrangement Agreement TN97-3836-00 is deleted, and that the following language reflects the parties' agreement regarding termination liability charges." Accordingly, the language on pages 15 and 16 set forth the termination liability charges in their entirety, and the Tennessee Regulatory Authority will determine whether to approve them or not. If they are approved by the TRA, neither an arbitrator nor a court could alter this provision of the contract.

BellSouth notes that the TRA should approve these termination liability provision because it provides for termination charges that are consistent with those set forth in the Proposed Settlement Agreement submitted by BellSouth and the TRA Staff in the show cause docket. As long as the customer maintains a total of at least 475 Frame Relay Customer Connections throughout BellSouth's nine-state region, for instance, the customer may terminate additional Connections without incurring a termination charge.

For example, if the customer has 550 Connections across the region and terminates 50 of those Connections (leaving 500 Connections region-wide), the customer pays no termination liability at all because the customer continues to maintain at least 475 Connections region-wide.

If the customer then terminates an additional 50 Connections (leaving 450 Connections region-wide), the customer will pay termination charges equal to the sum of: (1) \$561 (contract preparation charge); plus (2) the non-recurring charges which were waived with regard to 25 circuits (the 475 minimum less the 450 in service). Even if termination charges are applied, therefore, the customer is not charged with a full or partial buyout of the remaining term of the contract. Instead, as explained above, the termination charges are limited to repayment of waived non-recurring charges and the contract preparation charge.

The only impact the arbitration provision has on the termination liability provision in the contract is the forum in which a claim for money damages upon termination of the CSA would be enforced. As you know, the TRA has no statutory authority to award damages in a breach of contract action. Thus the TRA could not enforce a claim for money damages upon the breach of a CSA by either BellSouth or the customer. Instead, such a claim typically would be enforced by the courts. Given the time, trouble, and expense associated with litigation, however, many parties to contracts agree to commercial arbitration of disputes arising under the contract.

Parties may not be compelled to arbitrate unless they have agreed to submit a dispute to arbitration. See *Bowater North America v. Murray*, 604 F.Supp. 821, 822 (E.D. Tenn. 1984). Once the parties agree to submit disputes to arbitration, however, there is a clearly established federal and state policy in favor of enforcing such agreements. See *Southerland Corp. v. Keating*, 465 U.S. 1, 10 (1984)(explaining that the Federal Arbitration Act not only "declared a national policy favoring arbitration," but actually "withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."). See also T.C.A. §29-5-302(a) ("A written agreement to submit any existing controversy to arbitration or a provision in a

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Item No. 2

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written contract to submit to arbitration any controversy thereafter arising between the parties is valid, enforceable and irrevocable save upon such grounds as exist for the revocation of any contract"); *Buraczynski v. Eyring*, 919 S.W.2d 314, 317 (Tenn. 1996) ("Moreover, the [model act upon which section 29-5-302 was based] embodies a legislative policy favoring enforcement of agreements to arbitrate.").

Accordingly, the arbitration provision does not alter the substantive terms of the contract, and more specifically, it does not alter the termination liability provision of an approved CSA. Instead, the arbitration provision is intended to provide a quicker and more cost-effective forum for the parties to resolve claims for money damages that may arise under the contract.

BellSouth Telecommunications, Inc.

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Item No. 3

REQUEST: Please describe all termination charges, other than repayment of waived non-recurring charges and contract preparation charges, that would be assessed if the customer terminates the contract before its expiration?

RESPONSE: As explained above, there are no other termination charges.