STATE OF TENNESSEE

Office of the Attorney General

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Reply to:
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Nashville, TN 37202

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August 2, 2002

Sara Kyle, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

00-00702

Re: BellSouth Telecommunications, Inc.
Tariff Filing for Contract Service Arrangements
Docket Nos. 02-00534, 02-00536 through 02-00545,
02-00550 through 02-00561, 02-00571 through 02-00580,
02-00598 through 02-00607, 02-00614-02-00615, 02-00627
through 02-00632, 02-00656 through 02-00662, 02-00669
through 02-00680

Dear Mrs. Kyle:

Enclosed are an original and fourteen copies of the Complaint and Petition to Intervene in the above-referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

CHRIS ALLEN
Assistant Attorney General

cc: Counsel of Record
57154

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: BELLSOUTH TELECOMMUNICATIONS, INC. TARIFF FILING FOR CONTRACT SERVICE ARRANGEMENTS	**Docket Nos. 02-00534, 02-00536 through 02-00545, 02-00550 through 02-00561, 02-00571 through 02-00580, 02-00598 through 02-00607, 02-00614-02-00615, 02-00627 through 02-00632, 02-00656 through 02-00662, 02-00669 through 02-00680**

COMPLAINT AND PETITION TO INTERVENE

Comes Paul G. Summers, the Attorney General & Reporter, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Attorney General"), pursuant to Tenn. Code Ann. § 65-4-118 and Rule 1220-1-2-.02 of the Tennessee Regulatory Authority and respectfully petitions to intervene in this case on behalf of the public interest since consumers may be affected by actions taken in this docket. The Attorney General petitions as follows:

1. The Attorney General has a duty and the authority under Tenn. Code Ann. § 65-4-118(c)(2)(A) to represent the interests of Tennessee consumers of public utilities services.

2. Additionally, under Tenn. Code Ann. § 8-6-109, the Attorney General has the duty and authority to attend to all business of the state.

3. The Attorney General is authorized by Tenn. Code Ann. §§ 65-4-118 and 65-5-210(b) to initiate, participate or intervene in proceedings to represent the public interest in accordance with the Uniform Administrative Procedures Act ("UAPA").

4. BellSouth Telecommunications, Inc. ("BellSouth") is a telecommunications utility regulated by the Tennessee Regulatory Authority ("TRA") pursuant to Tenn. Code Ann. §§ 65-4-101 and 65-4-104. Its usual address for service is 333 Commerce Street, Nashville, Tennessee 37201-3300.

5. BellSouth filed a tariff for a Contract Service Arrangement ("CSA") seeking approval for a departure from the general tariff for a particular customer. Current TRA Rule 1220-4-1-.07 permits such special contracts not covered by or permitted in the general tariffs subject to supervision, regulation and control of the TRA.

6. Based on information and belief, there presently is only one mechanism to establish that the contracts submitted for approval are special and unique.[1] This requirement fails to acknowledge that there is competition for all of BellSouth's customers to one degree or another. Therefore, these CSAs cannot be justified on the basis of general competition. Moreover, the statement does not provide a sufficient basis for differentiating between different levels of competition. Given the general presence of competition in the marketplace there has to be some other basis to establish competition as unique. To the extent this is lacking the customer statement mechanism fails to add anything at all to the issue of special or uniqueness, which is required to be shown to warrant approval of a CSA.

7. The presence of competition in a general sense is insufficient to warrant a CSA at the federal level. The general rule at the federal level is that dominant Local Exchange Carriers

[1] On page 7 of a letter dated June 17, 2002 from BellSouth to the TRA attached hereto as Exhibit 1, Mr. Howorth states: "the Authority has established a requirement for BellSouth's filings for special contracts to contain a statement signed by the customer demonstrating the competitive environment as a unique situation in which the contract service arrangement was negotiated."

("LECs") are not allowed to offer individualized contract rates to certain customers and not to others. While there are two exceptions to this general rule only one has been applied to dominate LECs.[2] As applied to a dominant LEC, the Federal Communications Commission ("FCC") requires positive proof of more particularized levels of competition for each type of service. Pursuant to 47 CFR § 69.727 LECs must show that they have fulfilled the competition requirements set forth in §§ 69.709(a), 69.711(a), or 69.713(a), which each govern different types of service (e.g. between the LEC end offices and customer premises; dedicated transport and special access services other than channel terminations; or common line, traffic-sensitive, and tandem switched transport services). Under these sections, LECs must make a positive showing that the competitors in the relevant area have "collocated" (have switches installed paralleling the dominate LECs) in a certain percentage of the LECs wire centers. The percentage differs according to the type of service. Thus, its clear that under federal law the mere existence of a competition does not warrant a departure from the general tariffs. The Attorney General maintains this is persuasive as to what levels of competition BellSouth must affirmatively establish before a CSA is approved by the TRA.

8. BellSouth has an economic incentive to assert sufficient levels of competition exist. The utility is able to negotiate a special deal with a single customer or group of customers without having to give the same deal to their other customers as would be required under the general tariffs. Moreover, the CSA customers' signed statement concerning the presence of competition is also self-serving. In this context it makes sense to adopt the federal approach and

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[2] See *In the matter of Southwestern Bell Telephone Co.*, 13 FCC Rcd. 1718 (1997)(Suspension Order) (The competitive necessity doctrine has never been applied to dominant LECs).

require a more particularized, concrete, and objective showing of competition to ensure that, in fact, the appropriate levels of competition do exist. This is necessary to affirmatively establish that the circumstances are truly special or unique as warranting a CSA. It does so by establishing a basis steeped in competition to differentiate between customers without the concerns of the self-interests of both BellSouth and the customer.

9. Another problem with CSAs is that they are not presently made generally available to all similarly situated customers as required by 47 CFR § 69.727. BellSouth customers in general do not have the necessary information to ascertain if they are similarly situated. They lack the name, address, and comparative business volumes to make sense of the discounts under the CSAs.[3] Without this information customers cannot evaluate existing CSAs which serves as a barrier to BellSouth having to offer the same special deals to more customers.

10. Based on the foregoing reasons, the TRA should either implement more reasonable filing requirements or, in the alternative, take more time in reviewing each CSA. The TRA should remain ever-aware of the fact that it is BellSouth that has the burden of establishing the uniqueness of each CSA. The present policy of the TRA is that CSAs are deemed approved ten days after being filed when non-affiliated customers are involved.[4] It does not seem practical that

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[3] This goes beyond the redaction of the name and address of each CSA customer which is clearly a violation of the Public Records Act. Rather, it also encompasses information presently filed under proprietary seal. Without this information, any comparison by a customer generally or a customer with a CSA, wanting to review other CSAs to determine if it got a good deal, is meaningless. The importance of this cannot be overstated because it is the presumption that this information will be available that is the safeguard for approving the departure from the tariffs in the first instance.

[4] BellSouth admits that, while the proposed rules have not been approved by the Attorney General, the TRA has adopted the proposed rules and that the proposed rules were applied to CSA's as the policy of the TRA. See BellSouth's letter to the Executive Secretary dated June 17,

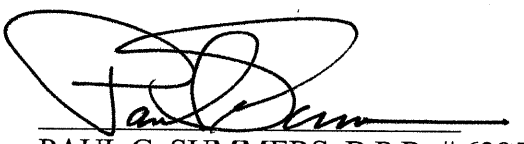
this can be done over such a short period of time. For the reasons previously stated, even after the filing under the current regime, it must be established that unique or special circumstances exist which are necessary to approve the CSA in the first place. BellSouth has not met this burden; it remains incumbent on BellSouth to establish by other means that a sufficient level of competition exists. This must be done in some fashion for each customer. Since this has not been done before initially, at the very least, it is reasonable to expect it would take more than ten days to do this. Moreover, the public does not have a realistic opportunity to review the CSA filing. Therefore, the review process should be conducted over a longer period of time until the TRA puts in place a more appropriate mechanism. While the TRA should strive to limit bureaucracy, its paramount concern should be ensuring that special contracts are warranted by either closely reviewing each particular case or implementing the mechanisms necessary to accomplish this.

11. While the Attorney General takes issue with these particular CSAs submitted by BellSouth, it is important to note that he believes that the same standards should be applied to CSAs submitted by Competitive Local Exchange Carriers ("CLECs"). For that reason, the Attorney General believes that the same issues exist with respect to CSAs submitted by CLECs.

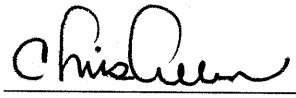
WHEREFORE, the Attorney General prays that the Authority convene a contested case for the purpose of evaluating the issues in this matter.

2002 at page 2 which states in part, "In view of the Authority's expressed desire to implement these Rules as the Authority's policy pending final approval ..." and "Consistent with that policy, BellSouth requests (and has requested) that its filing be effective in 10 days, as permitted in the new rule." The letter is attached as Exhibit 1. Proposed Rule 1220-4-2-.59 (7)(a) states in part: "Special contracts with non-affiliate customers shall be deemed approved ten (10) days after the date of the proper filing ...".

Respectfully submitted,



PAUL G. SUMMERS, B.P.R. # 6285
Tennessee Attorney General



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Complaint and Petition to Intervene was served on parties below via facsimile and U.S. Mail, postage prepaid, on the 2nd day of August, 2002.

Guy M. Hicks, Esquire
General Counsel
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300

Chris Allen

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BELLSOUTH

BellSouth Telecommunications, Inc.
Suite 2104
333 Commerce Street
Nashville, TN 37201-3300

Charles L. Howorth, Jr.
Regulatory Vice President

615 214-6520
Fax 615 214-8858

June 17, 2002

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

RE: BellSouth's Tariffs for Special Contracts

Dear Mr. Waddell:

On the June 18, 2002 Final Conference Agenda, there are 19 tariff filings for special contracts which BellSouth requests that the Authority approve. BellSouth submits that the Authority erred in denying those tariffs for special contracts on the June 11, 2002 Agenda and, for the reasons submitted below, would request that the Authority reconsider those tariffs on the Authority's own motion and, consistent with its past actions, approve those tariffs as well as the pending tariffs. In support of its position, BellSouth submits this letter which addresses comments and conclusions made by the TRA during the Director's Conference on June 11, 2002 in support of its actions rejecting BellSouth's tariff filings for special contracts on the Conference Agenda. In this letter, BellSouth will demonstrate the following:

I. Every BellSouth tariff filing for special contracts (including the tariffs noted on the June 11th and June 18th Agendas) have been submitted to the Authority under existing TRA Rules;
II. BellSouth's proposal for addressing the Attorney General's rejection of the Rules for violation of the Public Records Act is consistent with previous representations to the Authority and meets the Attorney General's stated concerns;
III. BellSouth's tariff filings contain provisions that address comments by the Attorney General regarding certain provisions of the proposed Rules (i.e., unjust price discrimination, mechanism to ensure that special contracts are justified by special conditions, and termination charge provisions that could constitute a penalty); and
IV. The number of tariff filings for special contracts submitted to the Authority is consistent with previous representations to the TRA

BellSouth respectfully requests that the Authority carefully consider this information, approve BellSouth's tariff filings for special contracts on the June 18 Conference Agenda, and reconsider their rejection of BellSouth's tariff filings for special contracts on the June 11 Conference Agenda.

I. Every BellSouth tariff filing for a special contract has been submitted to the Authority under the existing TRA Rule 1220-4-1-. 07.

During the June 11, 2002 Conference, Director Malone stated:

> "Those CSAs singly, jointly, whatever, were filed pursuant to a rule which has been rejected." (Transcript, page 13, lines 10-12)

The existing Rule has been, and remains, the only TRA Rule under which BellSouth could file special contracts. While the Authority adopted proposed Rules in Docket 00-00702, those Rules have never been in effect, and they have now been rejected by the Tennessee Attorney General for the two reasons (and no others as some have inferred) stated in his letter dated May 31, 2002. Nothing in BellSouth's tariff filings for special contracts indicates that they were being filed under the proposed Rules. In fact, tariff filings for special contracts submitted to the Authority after August 15, 2001 have contained the following statement:

"On April 3, 2001, the Authority adopted new Rules in Docket No. 00-00702. In view of the Authority's expressed desire to implement these Rules as the Authority's policy pending final approval, BellSouth filed a tariff to voluntarily comply with these Rules, and that tariff became effective on August 15, 2001. Since these Rules have now been implemented as the Authority's policy, BellSouth is submitting this filing under provisions in those Rules which allow a 10-day interval for the Authority's review and approval of tariffs for special contracts."

This language clearly states that the filing is made under the provisions of the new Rule as the **policy** of the Authority. Consistent with that **policy**, BellSouth requests (and has requested) that its filing be effective in 10 days, as permitted in the new Rule. Nothing in this language suggests that BellSouth has made its filing under the proposed Rule that was, of course, not in effect. In approving these filings since August 15, 2001, the Authority itself has approved the CSAs under the existing Rule, specifically waiving the 30-day period for filing tariffs as permitted under the existing Rules (See transcript of Conference on May 21, 2001, Page 67, lines 15,16; transcript of Conference on May 7, 2002, Page 103, lines 9-11; transcript of Conference on April 30, 2002, page 55, lines 19,20).[1] Procedurally, it is inconceivable that the TRA would accept a filing under a proposed, unapproved Rule, then approve that filing under its existing Rules.

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[1] The TRA has not permitted these tariffs for special contracts to become effective under the proposed Rule. Rather, as stated above, the TRA has approved these tariffs under the existing Rule and has waived the 30-day filing requirement.

Again, in the June 11 Conference, Director Malone stated that:

> "The language in the CSAs, present and past, is language that is consistent with the rule, and the rule has been rejected. So even to say that those CSAs can now come under the existing rules while the existing rule has not been attacked, the content of the CSAs has been." (Transcript, Page 13, line 14-20)
>
> "The rules have been rejected. These CSAs - - the very content of these CSAs was fashioned consistent with that rule." (Transcript, Page 22, lines 13-15)
>
> "These CSAs are put before the agency in a manner I assume negotiated with the customer. They contain provisions consistent with the rules that have been rejected." (Transcript, page 22, lines 18-21)

BellSouth's tariff filings for special contracts meet every requirement that has been established under the existing Rules. A brief discussion of these filing requirements is in order.

A. Evolution of filing requirements under the existing Rule:

TRA Rule 1220-4-1-.07 states that special contracts are subjected to the supervision, regulation and control of the Authority, and require that a copy of special agreements shall be filed, subject to review and approval. While this Rule does not explicitly require filing special contracts as tariffs, BellSouth has done so to address verbal, informal concerns of the Staff with regard to possible undue price discrimination. Therefore, tariff filings for special contracts have been a long-standing practice to address this issue. To date, this practice has been sufficient to satisfy the Authority on this matter under the existing Rule.

The Authority has incrementally added several other requirements on BellSouth with regard to filing special contracts over recent years. In informal discussions, with the Staff, BellSouth agreed to file a price-out, demonstrating that the rates provided in each special contract were above its costs. In addition, BellSouth agreed to add a price-out using tariffed rates for the services provided in the special contract, to provide the Staff a means of calculating the overall discount from tariffed rates provided by the special contract. A review of tariffs for special contracts filed by BellSouth will demonstrate that these additions were contained in filings made under the Authority's existing Rule.

During 1998, the Authority convened a contested case (Docket 98-00559) to address allegations made by CLECs with respect to CSAs filed by BellSouth. These allegations concerned potential anti-competitive effects of BellSouth's CSA , however, the Authority found unanimously none of the allegations made against the BellSouth's contracts, selected by the Authority for examination in this proceeding were true. Nonetheless, BellSouth later agreed to another incremental

requirement of the Authority, specifically, a statement signed by the customer demonstrating the competitive environment as a unique situation in which the contract service arrangement was negotiated (Transcript from Conference on September 28, 1999, page 44, lines 12-17, comments from Director Greer). This requirement was again, made under the Authority's current Rule.

BellSouth cooperated with the Authority later in adding an addendum, signed by the customer, to clarify the termination liability charge applicable if a customer terminates the contract prior to expiration of the term. This item has been the subject of much discussion. Two years ago, the Staff Investigative Team filed a Petition to Require BellSouth Telecommunications, Inc., to Appear and Show Cause that Certain Sections of its General Subscriber Services Tariff and Private Line Services Tariff Do Not Violate Current State and Federal Laws (TRA Docket 00-00170). BellSouth and the Staff Investigative Team reached a settlement agreement that was filed with the Authority on May 9, 2000. The Authority rejected that proposed Settlement Agreement and initiated the rulemaking proceeding (Docket 00-00702). However, BellSouth agreed with the Authority's request and began applying the termination liability provision contained in the Proposed Settlement Agreement to its special contracts.

Finally, after the Authority adopted its proposed Rules in Docket 00-00702, BellSouth complied with the Authority's request to treat the proposed rules as the policy of the Authority and implement this policy with its special contracts. The Authority also requested that BellSouth file a tariff modifying its tariff provisions regarding termination liability charges applying to tariff term plans. During the Directors' Conference on June 12, 2001, the Authority asked BellSouth about filing tariffs to reflect the termination liability language in the proposed Rules adopted in Docket 00-00702. Director Malone stated:

> "It appears to me that at every state where there was an agreement, whether it was by a majority or not, that the termination provisions as concerning BellSouth conformed to that agreement. And consistent with that, I don't see why we wouldn't get tariff filings consistent with the rule as proposed" (Transcript, page 21, Line 23 - Page 22, Line 4).

Mr. Hicks responded for BellSouth, stating that BellSouth was working on the tariff language and intended to file the tariff with the Authority before the proposed Rules were approved by the Attorney General. Mr. Howorth also spoke, providing further clarification of the effort required to develop and implement this tariff. This tariff was subsequently filed with the Authority and became effective on August 18, 2001 (Docket 01-00681). Therefore, the termination liability charge provisions contained in the proposed Rules are, at the Authority's request, included in and consistent with BellSouth's existing approved tariffs.

B. BellSouth's filings for special contracts made prior to August 15, 2001 do not materially differ from those made after August 15, 2001.

A comparison of filings for special contracts made before and after August 15, 2001 will demonstrate the following differences:

1. The termination liability charge provisions contained in Paragraph 2 of the Tennessee Addendum were slightly modified after August 15, 2001 to more accurately comply with specific wording contained in the proposed Rules. However, the termination liability charge provisions are materially the same.
2. After August 15, 2001, the Addendum contains a paragraph stating the "good faith numeric estimate" of possible termination charges consistent with proposed Rule 1220-4-2-.59(1)(e). This item was specifically proposed by Director Malone and adopted by the other Directors shortly before Director Malone voted to reject the proposed Rules.

Neither of these differences represents a material change in the rates, terms or conditions compared with CSAs filed prior to August 15, 2001. Therefore, CSAs filed before and after August 15, 2001 are essentially the same.

II. BellSouth's proposal for addressing the Attorney General's concerns with regard to the Public Records Act is consistent with previous representations to the Authority.

In its letter to the Authority on June 10, 2002, BellSouth proposed two alternatives to address the Attorney General's concerns with regard to the Public Records Act. The first alternative was to request that the TRA order the production of the customers' names to meet the Customer Proprietary Information (CPNI) concerns. BellSouth indicated that it would then comply with the Order, thus addressing one of the two issues upon which the Attorney General based his rejection of the proposed Rule. Under the second alternative, BellSouth would contact each customer with a special contract to obtain their permission to publicly disclose the customer's name. Addressing that proposal during the June 11, 2002 Conference, Director Malone stated:

> "And in previous times when we've attempted to get BellSouth to make minor revisions to a CSA and things that we understood customers to have agreed with, for years we were told, 'We can't go back to the customer to make that minor change. We can't do it.' And now I'm being told that we can revise these CSAs in major ways, consistent with the Attorney General's opinion, and the customer is where? I'm just not seeing it" (Transcript, Page 23, lines 3-11).

BellSouth's position on this matter is perhaps best expressed by Guy Hicks in comments before the Authority during the Conference on August 15, 2000. In a response to Director Malone's question of why BellSouth could not modify the terms of five CSAs on the Conference Agenda, Mr. Hicks responded:

> "Because we would have to go back to the customer, for one reason, and get them to sign yet another document. They have already negotiated a regional agreement. We have a handshake. We have a signed agreement. Then we've had to go back and get the Tennessee Addendum signed, which were doing in good faith, to address the concerns that some of the directors and staff have raised, and we're going to be required to go back again, and we're not willing to do that." (Transcript, Page 36, Lines 7-16; Docket 00-00627, CSA TN00-2108-02).

This response clearly indicates that BellSouth had, indeed, gone back to customers to get addenda signed subsequent to the signed contract, and nowhere has BellSouth stated that it "can't" go back to the customer. BellSouth has clearly stated its reluctance to go back to its customers, but it has clearly done so on many occasions. BellSouth's concern is based in part on the disparity of treatment by the Authority of BellSouth's special contracts and the special contracts of CLECs which results in BellSouth having to frequently go back to its customer to meet the many changes to its special contracts requested by the TRA when our competitors have no such impediment. BellSouth, by its letter, has offered to "cure" the Attorney General's concern regarding the state Public Records Act, thus removing such concern as a preclusion to approval.

III. BellSouth's tariff filings contain provisions that address comments by the Attorney General regarding certain provisions of the proposed Rules

The deliberation and action of the TRA in the June 11th Conference went far beyond the reasons given in the Attorney General's letter for rejection of the propose Rules. In doing so, the TRA erred. The Attorney General's letter of May 31, 2002, did not reject the proposed Rules based on the following issues. Rather, the Attorney General simply commented on these issues and requested additional comments from the Authority if and when the proposed Rules were submitted for additional review. However, BellSouth believes that its tariff filings for special contracts under the existing TRA Rules address each of these concerns.

A. Unjust price discrimination:

The Attorney General expressed concerns about the proposed Rules regarding possible unjust price discrimination with regard to the use of special contracts. The proposed Rules only require price regulation companies to file a final signed copy of all special contracts, including attachments and addendums, **or** a written tariff summary. As described in Item I.A above, BellSouth does both, and the tariff filing was initially required by the staff to address the potential for unjust price discrimination. Therefore, BellSouth's tariff filings under the TRA's existing Rule address this concern.

B. Mechanisms to ensure that special contracts are justified by special conditions

While the proposed Rules may or may not address this issue, the Authority has established a requirement for BellSouth's filings for special contracts to contain a statement signed by the customer demonstrating the competitive environment as a unique situation in which the contract service arrangement was negotiated. As described in Item I.A above, this mechanism was developed under the Authority's existing Rules and applied only to BellSouth. Therefore, BellSouth's tariff filings under the TRA's existing Rule address this concern.

C. Termination charge provisions that could constitute a penalty

During the Directors' Conference on September 28, 1999, after a discussion related to the Tennessee Supreme Court's decision in the ***Cleo*** case, Director Malone stated:

> "Let me as a matter of courtesy from the bench and as a matter of direction to BellSouth. Mr. Hicks, I would very much appreciate it if in future filings with respect to CSAs that the issue surrounding the termination clauses is clearly set forth so that I can make a determination on whether or not the provisions does, in fact, comply with the Supreme Court decision and why these tariffs may result in lower rates. I think it's also incumbent that they comply with the Supreme Court decision" (Transcript, Page 67, lines 14-23).

BellSouth subsequently developed the following language with is included in its special contracts with some slight variation in format:

> "Customer and BellSouth agree that the Customer's early termination of the Agreement without cause will result in damages that are indeterminable or difficult to measure as of this date and will result in the charging of liquidated damages. Customer and BellSouth agree that with regard to services provided within the State of Tennessee, the amount of such liquidated damages shall equal the lesser of (A) the sum of the repayment of discounts received during the previous 12 months of the service, the repayment of any pro-rated waived or discounted non-recurring charges set forth in Note 2 of the Agreement, and the repayment of the pro-rated contract preparation charge set forth in Note 2 of the Agreement; or (B) six percent (6%) of the total Agreement amount. Notwithstanding any provisions in the Agreement to the contrary, Customer and BellSouth agree that with regard to services provided within the State of Tennessee, this Paragraph of this Addendum sets forth the total amounts of liquidated damages the Customer must pay upon early termination of the Agreement without cause. Customer and BellSouth agree that these amounts represent a reasonable estimate of the damages BellSouth would suffer as a result of such early termination and that these amounts do not constitute a penalty. "

This termination charge provision in BellSouth's special contracts goes beyond the requirements of both the settlement agreement in Docket 00-00170 and the proposed Rules, and this provision reflects language consistent with the Tennessee Supreme Court's decision in the ***Cleo*** case. This language clearly reflects the customer's agreement that the termination liability provisions in its special contract do not constitute a penalty. Therefore, the termination liability provisions are based on its approved tariffs, not the proposed Rules, and the language (consistent with the ***Cleo*** decision) addresses the Attorney General's comments about the provisions of the proposed Rules.

IV. The number of tariff filings for special contracts submitted to the Authority is consistent with previous representations to the TRA

During the June 11, 2002 Conference, Director Greer stated:

> "And I will refer back to some conversations we had a year or two ago when Director Malone and I were talking about the pipeline, and we were told that this was not going to be a broad company policy; that this was - - there were very few in the pipeline. And I made the comment if, in fact, this was going to be a broad company policy, why didn't we just put these in a tariff and make them available to everybody. And I was assured that this was not going to be a broad company policy" (Transcript, Page, Lines 14-23).

Director Greer went on to state:

> "I'm not sure that the answers I got - - Director Malone and I got along this line two years ago are consistent with where we are today" (Transcript, Page 15, lines 5 - 7).

Counsel for BellSouth, Guy Hicks, disagreed with Director Greer's comments, stating that he had reviewed the record and was unable to find where BellSouth had made such a representation. In further support of BellSouth's position, attached is a memorandum, prepared on March 13, 2001 that thoroughly addresses this issue and demonstrates that the record of BellSouth's representations to the Authority does not support Director Greer's recollection.

In conclusion, BellSouth has demonstrated that its tariff filings for special contracts were made under the TRA's existing Rules, not the proposed Rules. BellSouth has previously proposed two alternatives for addressing the reason for the Attorney General's rejection of the proposed Rules (i.e., violation of the Public Records Act), and these alternatives are consistent with previous representations to the Authority. BellSouth's tariff filings address the Attorney General's comments on other features of the proposed Rules. And finally, the number of tariff filings for special contracts is consistent with previous representations to the Authority.

Therefore, BellSouth respectfully requests the Authority's careful consideration of the information contained in this letter, approval of the tariffs for special contracts on the June 18, 2002 Conference Agenda, and reconsideration of its rejection of the tariff filings for special contracts during the June 11 Conference.

Yours truly,

Charlie Howorth

Attachments