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April 30, 2001

HAND DELIVERY

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

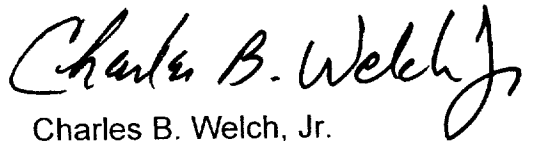
Re: *Rulemaking Proceeding Concerning Regulations for the Provisioning of
Tariff Term Plans and Special Contracts*
Docket No. 00-00702

Dear Mr. Waddell:

Enclosed please find the original and thirteen (13) copies of Time Warner's Reply to Response of BellSouth to Time Warner's Petition for Reconsideration in the above-referenced docket. If you have any questions, please contact me.

Very truly yours,

FARRIS, MATHEWS, BRANAN,
BOBANGO & HELLEN, P.L.C.


Charles B. Welch, Jr.

CBW:lw

Enclosures

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:)	
)	
PROPOSED RULES FOR THE)	Docket No. 00-00702
PROVISIONING OF TARIFF TERM)	
PLANS AND SPECIAL CONTRACTS.)	

**REPLY TO RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO TIME WARNER'S PETITION FOR RECONSIDERATION**

I.

In its response to the Petition for Reconsideration filed in this cause by Time Warner Telecom of the Mid-South, L.P. ("Time Warner"), BellSouth Telecommunications, Inc. ("BellSouth") argues that there are but very few instances under applicable law which would permit the Authority to regulate the incumbent local exchange carrier differently from competing carriers. Time Warner finds this argument unpersuasive in that the very intent of both the state and federal law is to provide for rules and regulations which encourage and stimulate competition. The very nature of the monopoly environment in which the competing carriers are making an effort to establish a market share often requires various forms of regulation which affects the incumbent monopoly provider differently from those carriers without market share. Further, rules adopted to prevent anti-competitive practices pursuant to T.C.A. §65-5-208(c) necessarily are only applicable to those carriers engaged in anti-competitive conduct. Time Warner categorically disagrees with BellSouth's characterization of the applicability of state and federal law as set forth in its response to the Petition for Reconsideration.

II.

The purpose of this reply is not to analyze and argue the legal issues addressed in BellSouth's response. Instead, Time Warner provides this brief comment concerning the process, both formal and informal, leading to the Authority's ultimate vote adopting rules in this docket. First, Time Warner submits that there has been much debate and negotiations among all the interested parties concerning appropriate rules. Generally, all industry members agree that rules applicable to contracts or special arrangements between providers and their business customers should be less rather than more restrictive and burdensome. Secondly, the entire industry reached a conceptual agreement regarding the acceptable scope of the proposed rules. Specifically, Time Warner and BellSouth worked together to memorialize this agreement in writing. Although not formally filed, a copy of these industry proposed rules were distributed to the offices of each Director. A copy of the document is attached hereto as Exhibit A.

Although a portion of the industry proposal was incorporated by the vote of the Directors which adopted the final version of the rules, revisions to the proposal significantly changed their scope and effect, especially as to competing carriers. The most important significance is that the rules, as adopted, impose more restrictions on competing carriers than the current rules and adversely impacts their ability to compete in targeted, business markets.

III.

Time Warner acknowledges that the Authority has the jurisdiction and discretion to adopt rules in this proceeding independent of an agreement reached between any or all

of the industry members. Time Warner believes, however, that the rules ultimately adopted by the Authority were materially influenced by the agreement attached hereto as Exhibit A. To the extent the agreement influenced the Directors' final decision, Time Warner strongly submits that it and other competing carriers should have an opportunity to be heard on the revisions which adversely affect their business practices. Further, Time Warner submits that its petition to be heard on reconsideration is in keeping with the practice of the agency since its inception to ensure fairness and a full opportunity to be heard. A full opportunity has not been accomplished in this docket until Time Warner and other industry members have an opportunity to fully explain the course and events leading to the parties' agreement. At this point, Time Warner feels that it has been penalized by participating in an effort to reach an amicable agreement between industry members and that, to the extent the final rules were influenced by the agreement, feels that more favorable rules probably would have been adopted by the Authority if it had maintained a more litigious posture.

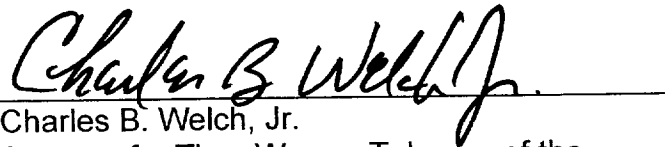
IV.

In light of the agreement, Time Warner is confused by the position taken by BellSouth in its response to the Petition to Reconsider. In order to clarify the relative positions of the parties and to ensure that the Directors have had an opportunity to consider all the facts and circumstances pertaining to the development and adoption of the rules in this docket, Time Warner respectfully submits that the Petition to Reconsider should be heard as soon as practicable. Due to the importance of the issues and the

current status of the proceeding, Time Warner requests that this matter be considered at the May 1, 2001 Directors' Conference as an agenda item under Miscellaneous Business.

Respectfully submitted,

FARRIS, MATHEWS, BRANAN,
BOBANGO & HELLEN, P.L.C.

A handwritten signature in black ink, reading "Charles B. Welch, Jr.", written over a horizontal line.

Charles B. Welch, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via U.S. Mail, postage prepaid, upon the following, this the 30th day of April, 2001.

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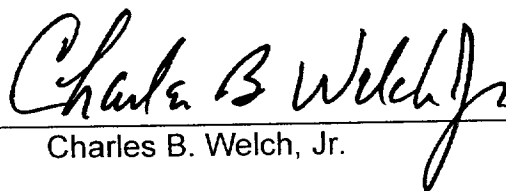
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Charles B. Welch, Jr.

**Substance of Proposed
New Rules**

1220-4-2-.59 Regulations for the Provisioning of Tariff Term Plans and Special Contracts

(1) Definitions

- (a) Average Annual Revenues – Aggregate revenues billable under a special contract or tariff term plan divided by the term length in years.
- (b) Shortfall Provision – A plan or contract clause requiring the customer to pay the difference between the actual billed revenue and the revenue commitment for a discrete period of time agreed upon by the telecommunications carrier and the customer
- (c) Special Contract - A service arrangement that is entered into between a local telecommunications service provider and certain customers prescribing and providing services, rates, terms, practices or conditions that are not covered in or permitted in the tariffs or price lists filed by such local telecommunications service provider. Special Contracts include without limitation all special contract arrangements, contract service arrangements, individual case basis contracts, etc.
- (d) Tariff Term Plan – A service arrangement, including special promotions, offered to customers under the telecommunication carrier's general tariffs for a service term of three (3) months or longer.
- (e) Local Telecommunications Service Provider – Telecommunications Service Provider means any Incumbent Local Exchange Telephone Company or certified individual or entity, or individual or entity operating pursuant to the authority of a franchise within T.C.A. §65-4-207(b), authorized by law to provide, and offering or providing for hire, any telecommunications service, telephone service, telegraph service, paging service, or communications service similar to such services unless otherwise exempted from this definition by state or federal law.
- (f) Incumbent Local Exchange Telephone Company means a public utility offering and providing basic local exchange telephone services defined by T.C.A. §65-5-208 pursuant to tariff approved by the Commission prior to June 6, 1995.
- (g) Competing Telecommunication Service Provider means any individual or entity that offers or provides any two-way communication service, telephone service, telegraph service, paging service, or communication service similar to such services and is certified as a provider of such services after June 6, 1995, unless otherwise exempted from this definition by state or federal law.
- (h) Termination Charges – All amounts, including but not limited to amounts resulting from the application of shortfall provisions, charged to the customer by

the local telecommunications service provider as a result of the cancellation of service prior to the time that the customer's obligations under a tariff term plan or special contract would have otherwise been satisfied.

(2) Application. This rule shall apply to all Telecommunications Service Providers until May 1, 2004, except the termination charges set forth in paragraph 4 herein shall not apply to Competing Telecommunications Service Providers.

(3) Availability. All rates, terms and conditions of service provided to any customer under a tariff term plan or special contract shall be available to any other customer for service of a like kind under substantially like circumstances and conditions.

(4) Termination Charges

(a) For all tariff term plans entered into after the effective date of this rule, termination charges shall not exceed repayment of discounts received during the previous twelve (12) months of service, except as specified in subparts (c) and (d) of this paragraph.

(b) For any special contracts entered into after the effective date of this rule, termination charges shall not exceed the total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted non-recurring charges, and the repayment of the prorated amount of any documented contract preparation, implementation and tracking, or similar charges, except as specified in subparts (c) and (d) of this paragraph.

(c) Tariff term plans and special contracts shall not permit termination charges to exceed six percent (6%) of the total tariff term plan or special contract amount. For service terms longer than four (4) years, tariff term plans and special contracts shall not permit the total termination liability charge to exceed twenty-four percent (24%) of the average annual revenues of the tariff term plan or special contract.

(d) Termination charges for an individual service may exceed the levels specified in subparts (a), (b), and (c) of this paragraph only upon demonstration to the Authority that the unrecovered portion, if any, of the customer specific costs incurred to provide such service exceeds the levels in subparts (a), (b), and (c) of this paragraph in the event of early termination.

(5) Use of Special Contracts

Telecommunications Service Providers may enter into tariff term plans and special contracts with their customers, and such tariff term plans and special contracts shall be effective upon execution by the Telecommunications Service Provider and the customer. Absent the approval of the Authority, the term of any special contract

between an Incumbent Local Exchange Telephone Company and a customer shall not exceed three years except in those situations in which the customer clearly desires a longer term. These situations include but are not limited to Requests for Quote (RFQ), Request for Proposals (RFP), or other situations in which the customer requests proposals in response to customer-designated requirements or specifications, including a term requirement exceeding three years. In such cases, a special contract shall indicate that any term exceeding three years is a specific requirement of the customer.

(6) Filing Requirements

The Authority shall be notified of the existence of any special contract between a Telecommunications Service Provider and a customer and shall be provided with a written summary of the contract provisions within 30 days after execution of the contract. Such written summary shall include:

1. A description of the services provided;
2. The effective date of the contract;
3. The term of the contract;
4. A detailed explanation of any Incumbent Local Exchange Company termination charge that exceeds the levels specified in subparts (a), (b), and (c) of subsection (4) of this rule section and a demonstration that the unrecovered portion, if any, of the customer specific cost incurred to provide such service exceeds the levels in subparts (a), (b), and (c) of subsection (4) of this rule section in the event of early termination; and
5. If applicable, information demonstrating that the customer requested a term of greater than three years from an Incumbent Local Exchange Telephone Company.

A Telecommunications Service Provider may redact the customer name from the written summary, but it shall provide the customer name to the Authority upon request.

(7) Powers of the Authority

Nothing in these rules limits or otherwise alters the Authority's power to review any special contract or tariff term plan, either upon request or on its own initiative, and to take any appropriate action as a result of such review.

Authority T.C.A § 65-2-102

Repeals

Paragraph (3) of 1220-4-8-/07, Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers – Local Service is repealed.

Amendments

Rule 1220-4-1-.07, Special Contracts, is amended by adding the following language:

Additional regulations regarding special contracts of certain telecommunications carriers are specified in Rule 1220-4-2-.59.

Authority: T. C. A. § 65-2-102