BELLSOUTH

BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel
615 214 6301
Fax 615 214 7406

May 17, 2002

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *In the Matter of Notice of Rulemaking Amendment of Regulations for Telephone Service Providers*
Docket No. 00-00873

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's *Brief Regarding Proposed Rules for Telephone Service Providers.* Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Joelle J. Phillips

JJP:ch

447461

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: ***In the Matter of Notice of Rulemaking Amendment of Regulations for Telephone Service Providers***

Docket No. 00-00873

BELLSOUTH TELECOMMUNICATIONS, INC.'S BRIEF REGARDING PROPOSED RULES FOR TELEPHONE SERVICE PROVIDERS

BellSouth Telecommunications, Inc. ("BellSouth") files this Brief Regarding Proposed Rules for Telephone Service Providers and respectfully shows the Authority as follows:

I. THE PROPOSED RULES FOR TELEPHONE SERVICE PROVIDERS DO NOT ADVANCE THE CAUSE OF COMPETITION, AND NO RELIABLE EVIDENCE HAS BEEN PRESENTED IN THIS DOCKET DEMONSTRATING THE NEED FOR CHANGES IN THE RULES.

During this rulemaking, no evidence has been put forth or identified demonstrating that Tennessee customers are demanding heightened service standards. Rather, as demonstrated more specifically in the Affidavit of Jeff Fox (Attachment "A"), BellSouth's customers have experienced an upward trend in customer service since the year 1999. Accordingly, this is not an appropriate time to increase regulatory burdens.

Competitive alternatives give customers the power to demand great service and give telecommunications companies the incentive to deliver it. Thus, without any increased regulation, the market pressures providers like BellSouth to deliver quality service. In a competitive market, customers, not regulators, should hold the

reins when it comes to driving service standards. By imposing regulatory requirements, rather than allowing telephone service providers to listen to their customers when deciding which services and what standards the customer demands, regulators take those reins away from customers. This marks a dramatic departure from the stated legislative policy behind telecommunications regulation in Tennessee as stated in T.C.A. § 65-4-123; it is a step away from the TRA's stated commitment to supporting competition in Tennessee; and it is a step away from empowering customers to benefit from competition by demanding the service they want rather than the service the Tennessee Regulatory Authority deems customers should receive.

Notwithstanding the May 7, 2002 oral comments of the Attorney General's Office, evidence available to the Authority shows that BellSouth's performance is not declining. BellSouth provides quarterly reports of monthly data demonstrating its compliance with the existing service standards, and those reports clearly evidence that BellSouth's service is currently comparable to, or better than, the service it was providing in 1995. Moreover, both this data, as well as the Automated Reporting Management Information Systems ("ARMIS") data, clearly demonstrates that, since 1999, BellSouth's service has improved, not declined, as the Attorney General's comments incorrectly suggested.

BellSouth acknowledges that its performance is not always perfect. Such anecdotal indications however of service in a given instance are not indicative of a trend in service. Moreover, reliance on such statistically-insignificant anecdotal

indicators, to the exclusion of the comprehensive service data reported quarterly to the Authority, would be arbitrary and capricious.

At no time during the docket has the Staff indicated, in any of its draft amendments to the rules, the specific source from which its proposals for new rules have been drawn. On the basis of its informal discussions regarding the basis for the Staff's determinations of appropriate service, BellSouth assumes that the standards are based on a variety of sources. First, BellSouth believes that the Authority has relied on ARMIS data which is filed by telecommunications providers with the FCC. As BellSouth has repeatedly urged in this docket, that information is compiled and reported as a state-wide annual average. As a result, it is impossible to use that data mathematically to produce rational per exchange or per month standards. Second, BellSouth believes that many of the proposed changes to the service standards may also reflect specific provisions within the service standards rules that are in effect in other states. Service standards rules must be considered as a whole, creating a complete regulatory scheme. It would be arbitrary to select one provision, out of the context of an entire set of service standards, and apply such requirements in a different situation. Moreover, no evidence has been adduced in this docket to suggest that the situation in Tennessee is sufficiently comparable to another state to warrant the application of that state's standard to Tennessee. This is particularly important to the extent that many of the standards address the time required to respond to service problems or installation requests. Clearly the geographic features and climate of the particular state, as well as the

configuration of the communities within the state, have a great impact on the response times for these functions. While BellSouth's systems are regional, actual response times are driven by the specifics of location, and accordingly, would not necessarily mirror the times required in other states, with different geographic features, climates, and population configurations.

As indicated in the industry comments during the oral comment session on May 7, 2002, the proposed regulations take away the ability of telecommunications providers to listen to their customers and respond by delivering those levels of service and service features that the customers require. The proposed service standards require companies to turn a deaf ear to ***customer requests*** and respond instead to *regulatory requirements* imposed by the TRA. Those regulatory requirements obviously come at a cost, and that cost could otherwise be put to work to provide the particular service that the *marketplace* demands rather than service features demanded by regulators.

In the absence of evidence adduced in this proceeding, the Authority should refrain from altering the current service standards. In the alternative, BellSouth respectfully suggests that an appropriate option may be to embark upon a study period, during which telephone service providers would report their compliance with the proposed service standards, and have an opportunity at the conclusion of this trial period to raise issues regarding the impact of such regulatory requirements on the industry. This option would both permit the Authority to actually gather and consider Tennessee-specific evidence regarding the effect of compliance with these

regulatory standards and also would provide the industry with a transition period during which to address many of the administrative issues discussed in this docket, which would result from immediate imposition of the proposed service standards.

II. SERVICE STANDARDS SET BY THE TENNESSEE REGULATORY AUTHORITY FOR THOSE TELEPHONE COMPANIES OPERATING PURSUANT TO PRICE REGULATION UNDER T.C.A. § 65-5-209 MAY NOT REQUIRE SUCH CARRIERS TO OPERATE AT A LEVEL OF QUALITY GREATER THAN THAT BEING PROVIDED ON JUNE 6, 1995.

On June 20, 1995, BellSouth applied for price regulation as provided in T.C.A. § 65-5-209. BellSouth's application was granted December 9, 1998 and effective as of October 1, 1995. Pursuant to T.C.A. § 65-5-208(1), as a price-regulated carrier, BellSouth shall provide service at the same level of quality as was being provided on June 6, 1995. The statute specifically establishes the level of service that can be required of a price-regulated carrier. Accordingly, the Authority lacks the statutory authority to impose more burdensome requirements on telephone companies operating under price regulation than those standards that are consistent with the level of service quality being provided on June 6, 1995, as expressly established by the statute.

It is well-settled under Tennessee law that the Authority must conform its actions to its enabling legislation. *BellSouth Advertising & Publishing Corp. v. TRA*, 2001 Tenn. App. LEXIS 102, *29 (Tenn. App.). Moreover, courts have held that the broad grant of regulatory jurisdiction contained in the statute should not be construed so liberally as to grant powers to the Authority beyond those either expressly granted by the statute or arising by necessary implication from express

language contained in the statute. *Id.* (citing *Pharr v. Nashville, C. & St. L. Ry.*, 208 S.W.2d 1013, 1016 (Tenn. 1948); *Tennessee Carolina Transp., Inc. v. Pentecost*, 334 S.W.2d 950, 953 (Tenn. 1960); *Nashville Chattanooga and St. Louis Ry. v. Railroad and Public Utilities Commission, et al.*, 15 S.W.2d 751 (Tenn. 1929); *Tennessee Public Service Comm. v. Southern Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977)). Notwithstanding the language contained in T.C.A. § 65-4-106 instructing that the powers of the Authority are to be broadly construed, as noted above, Tennessee courts have declined to use this provision to establish powers for the Authority that are not provided by or closely related to an express grant of statutory authority.

The statute does not allow the imposition of service standards requiring service levels exceeding those achieved in 1995. The statute specifically provides that "[t]hese services shall, at a minimum, be provided at the same level of quality as is being provided on June 6, 1995." T.C.A. § 65-5-208(1). While the price-regulated entities in this docket have unanimously taken the position that this statutory language established the applicable service standard, the Consumer Advocate Division of the Attorney General's Office has urged a contrary construction inconsistent with both the language of the statute and the context of the Price Regulation Statute as a whole. The dispute turns on the correct application of the phrase "at a minimum."

As used in the statute, the phrase "at a minimum" simply means that the 1995 level is the standard -- a standard is simply a statement of what one must do

"at a minimum" to avoid penalty. The statute simply defines the applicable standard, and this duty, accordingly, is not delegated to the Authority.

The Consumer Advocate Division argues that, because the statute says "at a minimum," the Authority may require more than that minimum. This reading is inconsistent with the statutory language. The Consumer Advocate's reading assumes that the phrase "at a minimum" describes the level of regulation to be imposed -- as if the statute said, "the Authority may, at a minimum, require service at the 1995 level." The sentence in question, however, does not refer to the level of regulation. Instead, it sets and defines the minimum level of service. The construction urged by the Consumer Advocate results in the substitution of a higher standard for the standard set by the General Assembly. Moreover, this construction is inconsistent with the price regulation statute as a whole.

Specifically, the price regulation statute presumes that local rates at the 1995 level were affordable for purposes of price regulation. Using the 1995 rates as a starting point, the price regulation statute establishes a limited process for adjusting affordable basic rates, based on inflation. Allowing this increase in local rates to account for inflation has the effect of offsetting any increase in costs that inflation causes. By doing so, the statute strikes a careful balance between increased costs and increases in rates. If the Authority were to be allowed to impose additional costs on BellSouth, or any company subject to price regulation, by imposing more stringent service standards, BellSouth would be required to incur government-imposed costs for which no recovery mechanism is provided. That is,

by imposing regulations on BellSouth which would, in essence, require it to provide service greater than that being provided in 1995 (with correspondingly higher costs), while BellSouth's rates are premised on the service levels in 1995, the Authority would undermine a basic premise of the price regulation statute. Clearly the 1995 service standard set out in the statute is not a mere coincidence. Rather, the General Assembly recognized that the 1995 rates were based upon the 1995 service levels and designed the statutory scheme with this concept in mind. The Authority cannot, consistent with the statute, require BellSouth to provide a higher level of service under the price regulation statute without allowing BellSouth to charge higher rates than are currently permitted by the Price Regulation Statute to pay for such changes in its service.

The regulations proposed by the Authority Staff on August 16, 2001, in numerous instances, would impose requirements on BellSouth to provide service at a level greater than that provided by BellSouth on June 6, 1995.[1] Accordingly, in each instance in which the regulations impose such a requirement, the Authority would exceed its statutory authority by promulgating such a rule.

As noted above, the promulgation of amended regulations for telephone service providers has not resulted from any specific finding or complaint regarding the current level of service provided by BellSouth. Rather, the process of amending

---

[1] Based upon the standards as proposed by the Staff on May 2, 2002, BellSouth would have been in violation for its performance during the year ending December 31, 1995. For example, with respect to 1220-4-2-.04(2) (Customer Refunds for Service Outages and Delayed Installation of Local Service), BellSouth would have incurred penalties exceeding $1,400,000 for its 1995 performance.

the regulations apparently has arisen from concerns expressed by the FCC over events in other regions. Accordingly, this effort is not driven in response to existing problems in Tennessee. The implementation of new rules is clearly intended to prevent deterioration in service in the future, rather than to remedy an existing problem with service levels being provided. The proposed regulations expressly recognize this, stating that the "regulations are intended to ensure that telecommunications customers in Tennessee continue to have access to quality telephone services in an emerging competitive telecommunications environment." Proposed Rules at 1220-4-2-.02.

BellSouth's service is currently comparable to the service provided in 1995 and, in many respects, BellSouth's service now exceeds the quality provided in 1995. Notwithstanding this level of service, the imposition of the proposed regulations as drafted would result in immediate penalties to BellSouth. Thus, as proposed, the regulations are punitive in nature, contrary to both T.C.A. § 65-5-208(1) and to the stated intent in proposed Section 1220-4-2-.02, and punish BellSouth for providing service at a level that is expressly permitted by Tennessee statute.

BellSouth respectfully submits that the proposed rules, if promulgated, would exceed the authority vested in the Authority by the statute.

III. THE PENALTY PROVISIONS IN THE PROPOSED SERVICE STANDARDS EXCEED THE POWER OF THE AUTHORITY TO ISSUE FINES.

As a threshold matter, BellSouth notes that it has worked extensively with Industry members as well as the Staff to try to find a set of service standards, including a set of penalties for the failure to achieve such standards, to which BellSouth could voluntarily submit. Clearly, if BellSouth voluntarily submitted to standards, issues with respect to the power of the Authority would not be raised. Accordingly, the Authority has an option enabling it to impose service standards and penalties; that option is to work with the industry to find a set of standards which the industry can embrace voluntarily.

The Authority has only a limited power to issue fines for failure to comply with rules it promulgates, without resorting to a court. That power is found in § 65-4-120 and limits the ability of the Authority to issue fines to $50 per day for a violation of an Authority rule or order. To the extent the fines exceed this amount, BellSouth respectfully submits that those fines would constitute an *ultra vires* exercise by the Authority.

Similarly, the Authority is not a judicial court. Accordingly, it is not empowered to enter judgments requiring the payment of damage awards. By requiring the parties to provide payments directly to another party, the Authority would act in a fashion not within its own jurisdiction, but rather within the jurisdiction of a court instead. Such an action would also constitute an ultra vires exercise as well as a violation of the constitutional requirement of separation of powers required by Article II, §§ 1 and 2 of the Tennessee Constitution.

IV. BELLSOUTH'S OBJECTIONS TO SPECIFIC PROPOSED AMENDMENTS.

A. Section .01 (Definitions)

(15) ("Primary Service")

While the word "primary" usually means first in rank or importance, the definition of primary service in the proposed service standards fails to limit the term to the first or most important telephone line at any given location. BellSouth has commented that the definition should provide instead that only one line at any location can be deemed the "primary service" line. As a result of this definition as drafted, the rules imbue each and every telephone line with equal significance for purposes of installation. The practical result of this requirement is that the rules will operate to place the same emphasis on installation for a fifteenth line at a location as is placed on the first, most important, or only line at a particular location. BellSouth would therefore be obligated to meet the same time requirements for installation of a 15th line that it must meet for the customer with one line who uses that one line for all its telecommunications needs. As drafted, the definition completely discards the concept of primary service and instead means all service. Customers with one telephone line would be severely disadvantaged by this rule, which will provide no incentives to ensure prompt installation of the single or most important line prior to installation of additional lines which are used less frequently.

B. Section .04 (Customer Refunds for Service Outages and Delayed Installations)

(1)(c) (Automatic Credit to Customers).

BellSouth has consistently opposed the rules to the extent that they require automatic credits to customers who do not seek them. BellSouth has never provided such service to customers, and the provision of an automatic credit where none is sought would far exceed the level of service that was provided to customers at any time in BellSouth's history. Customers recognize when circumstances warrant or do not warrant a credit or refund. As drafted, the rule completely disregards the customer's prerogative to recognize that a refund is unnecessary in a given situation. Moreover, requiring an automatic credit when no one seeks such a credit creates dramatic administrative burdens on telecommunications providers. It requires that the provider determine the manner in which to link unrelated systems, the billing system and the system for monitoring trouble reports. This would involve substantial costs. Finally, requiring the payment of a sum to a customer, rather than to the Authority, does not alter the character of that payment, which is still an Authority-ordered fine, subject to the statutory limitation.

(2) (Waiver of Installation Fees for Missed Installation Appointments).

This rule requires telecommunications providers to completely waive the installation fee on all installations, if installation is not achieved on the date for which an appointment was made, without regard for the reasons causing the delay. This rule clearly exceeds any performance level ever offered or achieved by BellSouth in the past. Moreover, the rule requires that BellSouth never make a

mistake. There are no safeguards in this provision to address circumstances beyond the control of the carrier. In fact, the rule would even permit a customer to purposefully prevent BellSouth from achieving installation, for example, by locking BellSouth out of a gate and preventing BellSouth's access to the NID, yet the customer would still be entitled to a waiver of installation fees. Safeguards included in other sections of the proposed rules, which protect BellSouth in the event that weather, third parties, or forces beyond its control affect its ability to perform, do not appear to apply to this rule.

There is no evidence to suggest that such a draconian rule is needed or appropriate. Confiscating BellSouth's installation fee in instances in which BellSouth is unable to meet an installation appointment due to forces beyond its control serves no purpose whatsoever. In such situations, where weather, emergency, customer action, or third party action prevents timely installation of service, punishing BellSouth will have no effect on the likelihood that such forces would prevent timely installation in the future. Furthermore, Section .16(2)(b) addresses standards and penalties relating to installations. Inclusion of this mandatory fee waiver constitutes a double penalty that is inappropriate.

This rule establishes a windfall for customers at substantial cost to BellSouth, and it is patently unfair.

C. **Section .06 (Disconnection of Local Service)**

(3)(a) (Disconnection for Failure to Pay Toll Services)

The proposed amendments to the service standards rules would prohibit the disconnection of local service resulting from non-payment of toll service. Disconnection of local service for the failure to pay toll service is an appropriate and long-standing device for ensuring the payment of charges owed for telephone service. Customers benefit from the availability of local service providers to collect for toll service providers on a consolidated bill. The inability to cut off local phone service when a portion of that bill remains unpaid will provide a disincentive for long distance carriers to utilize billing by local providers. Moreover, there are adequate protections contained elsewhere in the service standards rules to prevent disconnection when the overdue charge is disputed by the customer, during the time that such dispute is pending.

(3)(c) (Guarantees).

The provision in this proposed service standard prohibiting BellSouth from terminating service to a guarantor, when the guarantor fails to perform on its guarantee, does not serve customers' interests. If BellSouth is unable to disconnect service to a guarantor who has failed to performed on the guarantee, then BellSouth will simply choose not to permit parties to establish credit using a guarantee of a third party. This rule renders such guarantees worthless to BellSouth because the guarantee would be largely unenforceable. This rule therefore has the practical effect of depriving customers of the presently-available convenience of

establishing credit through the guarantee of another party. Accordingly, this rule fosters poor public policy.

D. **Section .07 (Termination of Service to Reseller or Cessation of Service by Local Service Provider)**

(2)(c) (Oral Notification Before Cut-off).

This rule, which requires BellSouth to notify parties orally five days prior to cutting off their local phone service, clearly exceeds service levels that existed in 1995. BellSouth has never been required to provide oral notification that it was discontinuing service. As a practical matter, there is no way to ensure that oral notification to a particular party would even be possible. Engaging in this attempt would, however, increase average answer times and require other customers to wait while service representatives took time to engage in an attempt to reach someone to deliver this notice orally. Parties whose service will be discontinued are notified in writing, both in a bill and in a cut-off notice. There is no evidence to suggest that there is a legitimate need for further oral notification. Not only is this requirement beyond the service level provided at any prior time by BellSouth, this process also exceeds the normal billing process of any industry of which BellSouth is aware.

This rule provides yet another example of a service required by the rules regarding which there is no evidence to suggest that customers prefer. The same resources that would be dedicated to satisfy this requirement could be put to better use providing other services that customers actually value. There has been no

evidence in this docket to suggest that customers in the Tennessee market would value this service. Accordingly, this example typifies the manner in which imposition of these rules is a departure from competition. Rather than allowing telecommunications providers to listen to what their customers are requiring and invest their resources in providing it, the rules require telecommunications providers to provide services for which there is currently no market demand, no benefit, and no precedent.

E. Section .14 (Payment for Services)

(1) (Required Billing Payment Options)

The proposed service standards require BellSouth to provide various bill payment options, including the use of credit cards, to its customers. The rule, however, prohibits BellSouth from collecting any fee associated with such convenience. BellSouth would incur costs associated with these various options, and the rules would prohibit BellSouth from recouping that cost. This is yet another example in which the proposed rules require BellSouth to provide a service, which the market does not appear to demand currently, without the ability to recoup the cost associated with such service. Rather than requiring telecommunications carriers to provide billing options (at a financial loss), which customers may not currently wish to receive, telecommunications carriers should be free to use the resources that would be devoted to such an effort to provide services that their customers are actually asking to receive.

F. **Section .16 (Service Obligations for ETCs)**

(m) (Payment Centers)

This provision of the proposed rules requires that an ETC shall provide payment centers in convenient locations where customers can pay in person for telephone service. The rule does not specify what is meant by "convenient locations." Furthermore, the Authority should not dictate BellSouth's offering of payment options. Rather, this should be determined by the market.

G. **Section .17 (QSMs)**

(1)(a) (Triggering QSMs)

Section .17 addresses the imposition of quality of service mechanisms ("QSMs") for ETCs. Section (1)(a) provides that QSMs are triggered when a standard is missed in any three months within a calendar year. In contrast, however, BellSouth would be required to demonstrate its compliance with the service standards for three consecutive months in order to relieve itself of QSM status. These provisions should mirror one another. Accordingly, the rules should be revised to establish that QSMs are triggered when the service standards are not met in any three consecutive months within a calendar year. By making this change, the rules will address more appropriately trends in service rather than being triggered by unique occurrences.

The current proposed draft of this rule requires application of QSMs upon a 60-day period rather than two calendar month period. This is administratively

unworkable for BellSouth, whose systems address months rather than 30-day periods.

(1)(b) (Sentence Fragment)

The proposed draft rule currently is an incomplete sentence. The sentence should begin "QSMs shall not apply in."

(2)(a)-(b) (Installation of Primary Service)

The proposed service standard rule imposes penalties for each instance in which installation of primary service is not completed within three (3) business days, while the rule in Section .16 references an average of three days. Given that the requirement in Section l6 references average time, the imposition of penalties should turn on the failure to achieve greater than the average referenced in Section .16. BellSouth has suggested that this section should be revised to address failures to install primary service within five business days.

(3) (Customer Trouble Reports)

BellSouth objects to the proposed rule in many respects. Most importantly, the language of the rule is not clear. It is not apparent how the credit process envisioned by the rule would apply. It is unclear whether the credits are intended to be retroactive credits to customers who reported trouble during the period that triggered the QSM or whether the rule requires payment during a QSM period to all parties reporting trouble.

The following example demonstrates the confusion when one attempts to apply the rule as currently proposed. Consider an exchange with the following

monthly trouble reports per 100 lines and in which the requirement is that the trouble reports cannot exceed 7 per 100 lines:

Reports Per 100 lines per month											
Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
2	10	4	5	6	8	8	6	6	5	2	4

Based upon the rules as proposed, this exchange would be in violation and trigger QSM status after July 31, and the requirement of applying the credit of $10 must be implemented. Based on the current wording, numerous questions arise. Most importantly, which customer is to receive the credit, and how is the respective service provider to administer the process? Following are resulting questions, concerns and observations:

1. Is the credit to be applied retrospectively, and if so, does each customer in February, June and July receive credits or just those that exceeded the threshold?

2. If the credit is issued retrospectively, the resulting credit would not appear until the September bill, which will confuse the customers and cause numerous billing inquiries.

3. If the credit is issued retrospectively, do the customers reporting trouble in August, September and October also receive credits or are zero customers to receive credits, given that the threshold was not exceeded in those months? If every customer reporting trouble in those months are to receive credits, this would constitute an unduly onerous standard. Furthermore, credits should not be applied both retrospectively and prospectively.

4. Retrospective or prospective treatment of these credits, if to be paid to the customer, presents substantial administrative problems, as discussed above. Moreover, payments to customers encourage gaming of the system by the customer. Given the increased knowledge of the customer base, through sources such as internet

chat rooms, customers in exchanges in QSM status are likely to be aware of the prospect of credits and will be encouraged to manipulate the system, if every customer reporting trouble is to be credited. Paying the penalty to the Authority, rather than the customer, for those customers exceeding the threshold would minimize that possibility.

(8) (Separate Violation)

Subsection (8) provides that the failure to provide any automatic credit as provided in this rule shall constitute a separate and distinct violation of this rule. BellSouth objects to this provision primarily because it is unclear how the provision affects penalties imposed pursuant to the rules. This text was added to the proposed rules in the last draft by the Authority Staff and, accordingly, it has not been the subject of any discussion prior to the issuance of this draft on May 2, 2002. It appears that the intent of the language is to provide a process by which the failure to provide a credit could constitute a basis for an additional penalty. Such double counting is inappropriate.

BellSouth questions the meaning of this provision as well. It is unclear how the provision relates to the penalty provisions in the rules.

H. Section .18 (Lifeline/Link-Up)

(1)(a) (Citizenship Residency Requirements)

This provision of the rule, when combined with the requirements in subsection (3) (semi-annual verification procedures), requires that BellSouth verify that its customers receiving Lifeline or Link-Up are either U.S. citizens or authorized by the federal government to be in the United States. As an initial matter,

BellSouth believes that this additional citizenship requirement exceeds the requirements of the FCC's order governing the Lifeline and Link-Up programs. That order provides that eligibility is based solely on participation in a low income support program. Accordingly, a potential customer, regardless of his or her alien status, who has been granted benefits under one of the qualifying welfare programs, is entitled to be provided Lifeline service under the current regulations.

BellSouth is particularly concerned with the additional responsibility for policing the citizenship requirement. BellSouth is not in the business of administering government welfare programs. BellSouth is not skilled in evaluating eligibility for such programs. Rather, BellSouth relies upon proof that a potential customer ***is receiving*** such a program, rather than independently determining *eligibility* for such program. If these programs exclude illegal aliens from participation, then such parties would not be able to meet the current requirements for eligibility for Lifeline and Link-Up. By adding an additional requirement that BellSouth proactively obtain verification of citizenship, BellSouth would be placed in a position of evaluating birth certificates, green cards, or other documentation to establish citizenship. This process would require BellSouth to become knowledgeable regarding documentation, which it otherwise has no business purpose to evaluate, other than this specific requirement. Moreover, this requirement would force Bellsouth to probe customers for personal information, raising issues of privacy for those customers.

BellSouth proposes that the rule either be deleted or amended to state that BellSouth may meet its verification requirement by simply obtaining proof that the customer is enrolled in one of the qualifying programs or has been certified by the Authority. If the Authority wishes to engage in a check of citizenship, then it would be appropriate for the Authority, as a government entity, to do that on its own initiative.

(6)(b) (Link-Up Support Credits)

The requirement in the proposed service standards for retroactive credit of Link-Up service is inconsistent with the intent of the Universal Service Order. Pursuant to the FCC requirements, Link-Up eligibility is based upon Lifeline eligibility. Accordingly, if a customer is not eligible for Lifeline, then he is not eligible for Link-Up. If a customer becomes eligible for Lifeline after obtaining telephone service, then he can receive Lifeline from that point on and would receive Link-Up on any relocation from that time on. However, if he was not eligible for Lifeline when he installs service, then he was also not eligible for installation support at that time. *See* Universal Service Order, FCC 97-157, ¶¶ 345 and 374.

(7) (Educational Outreach Efforts)

BellSouth currently takes steps to inform Tennesseans about the Lifeline/Link-Up program. BellSouth informs its customers about the program through an annual bill insert. In addition, BellSouth participates in the national web site and has disseminated additional information primarily to organizations who provide social services to local income parties. The FCC has issued a public notice

on expanding Lifeline requirements, including the most effective way to reach potential Lifeline customers. Any additional promotional discussions should be set aside pending completion of the FCC's activities. FCC comments to date indicate more low income consumers can be reached if the agencies who administer the low income eligibility programs provide program information on Lifeline to their clients. Federal and state agencies should be encouraged to promote Lifeline as an adjunct to the benefits their clients are already receiving.

(7)(b) (Notification Regarding Lifeline to All Customers)

Informing every customer, regardless of any indication of eligibility, of the Lifeline program is unreasonable. It will increase average answer and hold times, and it is likely to annoy customers who are not low income and have no interest in these programs. Moreover, customers may perceive discussion regarding these services as a violation of their privacy. To those customers who are ineligible for the Lifeline program, being asked to listen to information about an inapplicable program when requesting installation for their local service will be an irritating inconvenience.

I. Section .19 (Numbering Issues)

BellSouth has responded to each draft of the proposed rules that included reference to numbering issues by noting that these issues should not be covered by the service standards rules. Issues regarding number conservation activity change rapidly and would require numerous updates to the rules in order to ensure that the Tennessee service standards reflect the current number conservation standards. As

a general matter, number conservation is a matter of substantial concern to the FCC, and the FCC has addressed several issues related to number conservation since the initial draft of this rule was released. Accordingly, the wording of the proposed rules on numbering is stale and inconsistent with the current numbering rules and activities initiated at the federal level. Moreover, as this area continues to develop, these rules will continue to become outdated quickly, requiring frequent revision. Since this docket was initiated, substantial steps have been taken in the number conservation area, and the industry has clearly demonstrated an awareness of the importance of number conservation in its willingness to support the public policies in this area and comply with the FCC and Authority orders established in other dockets. Accordingly, inclusion of these rules is unnecessary.

(1)(a) (Sequential Number Assignments)

BellSouth is unable to strictly comply with the proposed rule. BellSouth generally assigns numbers sequentially except when a customer specifically requests numbers that cannot be accommodated by sequential assignment. Pursuant to the requirements of the proposed rule, BellSouth would be required to seek an exemption from the Authority for every such occurrence. This process will no doubt have an unacceptable impact to the customer by delaying its request while awaiting regulatory approval.

(1)(b) (Assignment and Uncontaminated 1000 Number Blocks)

BellSouth is unable to strictly comply with this proposed rule. BellSouth's current system does not check the utilization level of an existing 1000 block before

beginning assignments in a new block. The FCC has not set a utilization rate of this type and the proposed rules goes well beyond the existing FCC rules and industry guidelines. In practice, BellSouth generally assigns all numbers within 1000 blocks before assigning numbers in another block already assigned to BellSouth. However, if a customer has a specific request, for example, a large block of sequential numbers within a certain 1000s group that BellSouth cannot accommodate within the current block, then BellSouth does assign numbers in the new block to provide service to its customer. Again, this rule would require BellSouth to stop the process to seek an exemption from the proposed rule by the Authority every time it receives such a request from a customer. This would unacceptably delay serving the customer's needs.

(1)(c) (Consolidation of Rate Centers)

Any rate center consolidation would be the subject of a specific Authority order resulting from a specific docket pursuant to the terms of the proposed rules. In order to ensure due process, any rate center consolidation would require an order in a docket in which specific evidence concerning the matter had been adduced. BellSouth has also expressed its willingness to support rate center consolidation subject to the conditions of (a) a workable implementation schedule; (b) implementation in a revenue-neutral fashion; and (c) the existence of a mechanism for cost recovery. None of these conditions has been included in the proposed rule.

(1)(d) (Number Pooling)

This proposed rule is no longer needed. BellSouth and other industry members have already complied with the orders issued by the Authority under authority delegated by the FCC to implement 1000 block number pooling in the Nashville MSA and the 901 NPA. Furthermore, the FCC is working to establish a national roll-out for 1000 block number pooling. The industry has an opportunity to comment on the FCC's proposed schedules, and there is no reason to expect that the industry will not make every effort to comply with the national schedule. The proposed rule accordingly is superfluous. Most recently, on March 14, 2002, the FCC issued a notice of proposed rulemaking wherein it sought comment on these matters. Accordingly, this matter is the subject of an open FCC proceeding and it is premature for the Authority to establish a rule while the FCC is evaluating a national rule.

(1)(f) (Return of Unused 1000 Number Blocks)

This proposed rule appears to conflict with current industry practice. A service provider currently has six months to put a new 1000s block into service or it must be returned to the pooling administrator. This rule conflicts with FCC rules and national guidelines by requiring the return of "insufficiently used" blocks while failing to define the term "insufficiently used". Accordingly, the rule should be deleted.

(1)(g) (Compliance with Any Other Number Conservation Measures Ordered by the Authority)

Again, this rule is superfluous. Any further conservation measures developed by the Authority would be the subject of a separate proceeding. Accordingly, the proposed rule establishes no additional requirements and should be deleted.

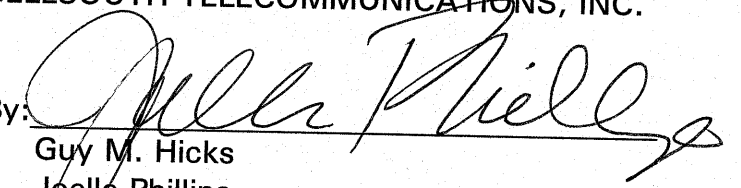
V. CONCLUSION

BellSouth is committed to providing its customers with excellent service. In light of both the present competitive environment and the constantly-expanding effect of competition as competition continues to spread to every Tennessee community, all carriers must share such a commitment to excellent service in order to keep their customers. The amendments to the service standards rules proposed on May 2, 2002 by the Authority undermine the advantages that competition brings to customers. Specifically, the proposed regulations would require carriers to consider first the demands of regulators, and, only after complying with those demands. would carriers be able to devote their resources to the differing demands of their actual customers. BellSouth urges the Authority to stay the course of

promoting competition of Tennessee and reject the proposed service standards, which do not further that cause.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks
Joelle Phillips
333 Commerce Street, Suite 2101
Nashville, Tennessee 37201-3300
(615) 214-6311

ATTACHMENT A

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: ***In the Matter of Notice of Rulemaking Amendment of Regulations for Telephone Service Providers***

Docket No. 00-00873

AFFIDAVIT OF JEFF FOX

JEFF FOX, after being first duly sworn, deposes on oath and says:

1. My name is Jeff Fox, and I am employed by BellSouth Telecommunications, Inc. My position at BellSouth is Director - Regulatory Tennessee, and I have held that position for approximately three years. In the course of my work at BellSouth, I have personal knowledge regarding the matters described in this Affidavit.

2. I earned a Bachelor of Science Degree in Accounting in 1982 from David Lipscomb University, and I became a Certified Public Accountant on September 6, 1983. Prior to working with BellSouth, I worked as an Auditor with Deloitte and Touche, and worked in the finance area as Corporate Controller and then as Director of Mergers and Acquisitions for A+ Communications, now known as Metrocall.

3. During this docket, I have worked on behalf of BellSouth to review proposals by the TRA Staff and to participate in workshops concerning the substance of the proposed rules. In connection with these efforts, I have reviewed

Automated Reporting Management Information System data (ARMIS data) filed by BellSouth, as well as service data compiled and reported to the TRA reflecting BellSouth's service in Tennessee.

4. Because the Tennessee Regulatory Authority Staff recommendations regarding proposed rules address monthly standards to be implemented per exchange, I have concluded that the more appropriate data on which to evaluate such standards is the Tennessee service data and not the ARMIS data. This is because the ARMIS data is annualized data which averages information statewide. It does not provide, therefore, an accurate picture of per exchange, per month performance. By contrast, the Tennessee service standard data specifically reports per exchange, per month performance.

5. Using the Tennessee performance data, I have created the report attached as Exhibit "A" to my affidavit, which highlights BellSouth's current performance as compared to its performance in 1995 and demonstrates that service provided by BellSouth since 2000 has been comparable to, or better than, its 1995 service in nearly all categories. My review of this data demonstrates that BellSouth's service is currently improving, and service levels have been in an upward trend since 1999. Specifically, BellSouth's performance in 2001 exceeded its performance in the year 2000 in nearly all categories. Moreover, my review of ARMIS data also confirms that BellSouth's service is currently improving, not declining, and has been in an upward trend since 1999. BellSouth's performance at this level is significant given the demands on BellSouth to service its retail and

wholesale customers as the areas it service continue to grow and develop. These demands places greater burdens for BellSouth, but BellSouth's service level has remained high.

FURTHER AFFIANT SAITH NOT.

JEFF FOX

Sworn to and subscribed before me, this 17th day of May, 2002.

Notary Public

My Commission Expires:

CAROLYN HANESWORTH
NOTARY PUBLIC AT LARGE
DAVIDSON COUNTY, TENN.

My Commission Expires NOV. 27, 2004

Service Standards Analysis
Comparison of BellSouth Service Levels
Based upon BellSouth's "TRA Service Standards Report" as filed

Each month BellSouth measures its service performance based upon the existing service standard requirements. These measurements are quantified monthly and reported to the Tennessee Regulatory Authority quarterly. Listed below is a comparison of BellSouth's 2001, 2000 and 1995 performance. The comparison clearly indicates (see RED font) that BellSouth's 2000 performance was very comparable to 1995 while our 2001 performance documents a significant improvement when compared to 1995. Furthermore, this analysis also demonstrates an improving trend in BellSouth's service levels as measured by existing service standards.

Trouble Reports per 100 lines

Total exchanges reported: 150
Average # of exchanges missing monthly objective:

	Exchange <3000 lines	Exchange 3000 to 14000 lines	Exchange >14000 lines
1995	0.67	4.17	0
2000	1.83	5.75	0.08
2001	1.92	**3.33**	**0**

Installation Orders

Total exchanges reported: 150
Average # of exchanges missing monthly objective:

	Within 5 Days <3000 lines/exch	Within 5 Days >3000 lines/exch	Appointments Met (all exchanges)
1995	3.08	2.67	1.08
2000	**1.42**	**1.17**	**0.50**
2001	**0.83**	**0.25**	**0.50**

% of Calls answered

	DA w/i 10 Seconds (all exchanges)	Dial Tone w/i 3 Seconds (all exchanges)
1995	78.08%	99.88%
2000	**78.66%**	**99.93%**
2001	**78.31%**	**99.93%**

Held Applications

	Monthly Avg. All Exchanges
1995	8.4
2000	117.42
2001	10.08

Legend: RED indicates 2000 or 2001 performance equals or exceeds the 1995 performance

CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2002, a copy of the foregoing document was served on the parties of record, via the method indicated:

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Sylvia Anderson
AT&T
1200 Peachtree St., NE
Atlanta, GA 30309

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

James Wright, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Dana Shaffer, Esquire
XO Communications, Inc.
105 Malloy Street, #100
Nashville, TN 37201

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Susan Berlin, Esquire
MCI Worldcom, Inc.
Six Concourse Pkwy, #3200
Atlanta, GA 30328

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Henry Walker, Esquire
Boult, Cummings, et al.
P. O. Box 198062
Nashville, TN 37219-8062

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

John B. Adams
Citizens Communications
250 S. Franklin St.
Cookeville, TN 38501

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Bruce H. Mottern
TDS Telecom
P. O. Box 22995
Knoxville, TN 37933-0995

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church St., #300
Nashville, TN 37219

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Timothy Phillips, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Andrew O. Isar, Esquire
ASCENT
7901 Skansie Ave., #240
Gig Harbor, WA 98335

[ ] Hand
[X] Mail
[ ] Facsimile
[ ] Overnight

Dale Grimes, Esquire
Bass, Berry & Sims, PLC
315 Deaderick Street, Suite 2700
Nashville, Tennessee 37238-3001