BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 17, 2001

IN RE:	)	
	)	
BELLSOUTH TELECOMMUNICATIONS INC.'S	)	**DOCKET NO.**
TARIFF FOR CONTRACT SERVICE	)	**00-00939**
ARRANGEMENT (TN99-7416-00)	)	

ORDER GRANTING APPROVAL OF BELLSOUTH CONTRACT SERVICE ARRANGEMENT (TN99-7416-00)

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on November 21, 2000 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN99-7416-00 ("CSA"). BellSouth filed Tariff No. 00-00939 on October 23, 2000, with a proposed effective date of November 22, 2000.

Based upon careful consideration of the tariff filing, the Authority makes the following findings and conclusions:

1. The purpose of this CSA is to provide a Volume and Term Discount to the customer identified in the filing. Through this arrangement, the customer agrees to meet an annual revenue commitment of $1.56 million in exchange for a nine percent (9%) discount.

2. The Executive Summary included with the CSA filing states that the term of the CSA is thirty-six (36) months. The CSA, however, does not include such a general statement. Instead, the Main Agreement defines the term as follows: "The term of the Main Agreement commences on the Effective Date and ends on the date on which the term of the last Attachment

hereto ends."[1] Attachment 1, the only attachment included with the filing, provides: "The term of this Attachment may be extended for one or more additional years upon the mutual agreement of the parties."[2] Lastly, Exhibit 2 to Attachment 1 provides:

> **Term: 2 Years. Beginning on May 1, 2000 and ending on April 30, 2002.** This Attachment will automatically renew for an additional one year term unless Customer provides BellSouth written notification to cancel the Attachment with such notification being received by BellSouth not less than sixty (60) days prior to the end of Contract Year two."[3]

Based on the language of the CSA, the Directors find that the term of the CSA is two (2) years with a one (1) year automatic renewal and endless optional renewals. Consistent with other decisions of this agency any optional renewal after the expiration of the two (2) year term and the automatic renewal is contingent upon approval by the Authority.

3. This CSA contains two termination provisions. The first relates to the termination of the underlying specific service and is linked to the tariff provision applicable to the underlying service. The second applies to the termination of the Volume and Term agreement. Because the first termination provision is contained in the underlying, previously approved tariff, it is only the second termination provision that is before the Authority in this docket.

4. In its October 23, 2000 cover letter included with the CSA filing, BellSouth agreed to notify the customer[4] that upon early termination of the CSA without cause, the lesser of

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[1] BellSouth Business℠ Master Services Agreement, sec. II (filed October 23, 2000). The CSA is comprised of two documents; the Main Agreement and Attachment 1.
[2] *Id.* Attachment 1, Terms and Conditions for BellSouth Telecommunications, Inc. ("BST") Regulated Services, para. 7P.
[3] *Id.* Exhibit 2 to Attachment 1, Terms and Conditions for BellSouth Telecommunications, Inc. ("BST") Regulated Services, para. 1.
[4] BellSouth agreed during the October 24, 2000 Authority Conference that it would send the notice to the customer upon approval of the CSA by the Authority. *See Transcript of Proceedings*, p. 15 (Authority Conference October 24, 2000).

the following termination liability charges would apply to the termination of the Volume and Term agreement:

a. The amounts specified in the CSA the customer signed;[5]

b. 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; or

c. Six percent (6%) of the total CSA amount.

5. This CSA contains provisions for incentive awards and commitment shortfalls. BellSouth provided an addendum executed by the customer clarifying the fact that the commitment shortfalls do not apply upon the customer's early termination of the CSA.

6. BellSouth provided an addendum executed by the customer stating that the customer was aware of competitive alternatives available to it in Tennessee and that the customer and BellSouth have agreed on the termination provisions and that the termination charges represent a reasonable estimate of BellSouth's damages in the event of termination.

7. BellSouth supplied cost data which indicates that the price of services offered under the CSA exceed their long-run incremental costs. Based on this information, BellSouth has complied with the statutory price floor established in Tenn. Code Ann. § 65-5-208(c).

8. No parties sought to intervene in this docket.

[5] The termination provisions in the CSA require the customer provide written notice of termination sixty (60) days prior to the effective date of the termination and pay termination charges equal to "(1) Discounts received for the life of the Contract or for the previous 12 months, whichever is less, and (2) The prorated portion of the Contract implementation and tracking costs . . . ." BellSouth Business[SM] Master Services Agreement, Attachment 1, section 7M (filed October 23, 2000).

Based on the foregoing findings and conclusions, the Directors unanimously determined that the CSA in this docket should be granted.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc.'s Tariff No. 00-00939, which seeks approval of Contract Service Arrangement No. TN99-7416-00, is hereby granted.

Sara Kyle, Chairman

H. Lynn Greer, Jr., Director

Melvin J. Malone, Director[6]

ATTEST:

K. David Waddell, Executive Secretary

[6] Director Malone noted that, generally, the underlying tariff termination provisions with respect to the specific services that may be used to meet the volume and term requirements of a Volume and Term CSA contain buyout clauses, sometimes amounting to a ninety percent (90%) or one-hundred percent (100%) buyout. Notwithstanding Director Malone's approval of this Volume and Term CSA, he remains of the opinion that tariff termination provisions, however triggered, containing such buyouts are so potentially anticompetitive as to warrant modification by the agency on a going-forward basis.