

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

October 22, 2001

IN RE:	)	
	)	
BELLSOUTH TELECOMMUNICATIONS, INC.	)	DOCKET NO.
TARIFF FILING FOR CONTRACT SERVICE	)	00-00942
ARRANGEMENT TN00-5669-00	)	

**ORDER APPROVING BELLSOUTH'S
CONTRACT SERVICE ARRANGEMENT (TN00-5669-00)**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on April 17, 2001 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN00-5669-00 ("CSA").

Background

BellSouth filed Tariff No. 00-00942 on October 23, 2000 with a proposed effective date of November 22, 2000. The CSA contained the following language:

Customer covenants and agrees that any and all payments, whether inter-carrier or otherwise as a result of any Output (all calls outbound from PRI circuit termination point), whether or not directed to or through an Internet Service Provider (ISP), an enhanced service provider (ESP), or a carrier, are Customer's responsibility. Customer is responsible for any and all charges relating to the transport and carrier compensation arrangements relating to Output, all transport and compensation for any ISP-bound traffic and switched access charges. Without limiting the generality of the foregoing, customer further covenants and agrees that reciprocal compensation payments do not apply to the Service as part of this agreement. Customer agrees to make no claim for reciprocal compensation against BellSouth in connection with use of the PRI circuits either directly or indirectly, and

further agrees to indemnify and hold BellSouth harmless against any and all reciprocal compensation obligations or claims that may arise as a result of any outbound calls from any PRI circuits during the term of this Agreement.¹

On November 3, 2000, the Authority issued data requests to BellSouth to clarify the need for and effect of the reciprocal compensation language. BellSouth filed its response on November 7, 2000.

The Authority first considered this CSA at a regularly scheduled Authority Conference held on November 21, 2000. The Directors unanimously voted to suspend the CSA for thirty (30) days, from November 22, 2000 through December 22, 2000. At the December 19, 2000 Authority Conference, the Directors voted unanimously to re-suspend the CSA for an additional thirty (30) days, from December 22, 2000 through January 21, 2001, to collect further data from BellSouth and to allow interested persons or entities the opportunity to file comments with the Authority regarding the reciprocal compensation language.

On December 20, 2000, the Authority issued a *Notice of Filing of Comments* requesting that all interested parties and entities file comments by January 2, 2001. On December 29, 2000, the Authority issued its second data request to BellSouth with a due date of January 5, 2000. BellSouth filed a letter on January 3, 2001 indicating that it would not be able to respond to the Authority's data request by the due date and proposed a new due date of January 19, 2001. On January 4, 2001, Sprint Corporation filed comments in which it stated: "Sprint does not believe the contract provision causes any harm, and as a result, no action need be taken by the TRA."²

¹ Contract Service Arrangement Agreement, Attachment 1 (Oct. 23, 2000).

² Sprint Corporation Comments, letter dated Jan. 2, 2001 (filed Jan. 4, 2001).

At an Authority Conference held on January 9, 2001, the Directors voted to re-suspend the CSA for an additional thirty (30) days, from January 21, 2001 through February 20, 2001, and to extend the due date for interested persons or entities to file comments to January 24, 2001.

BellSouth responded to the Authority's December 29th data request on January 19, 2001. Time Warner Telecom of the Mid-South, L.P. filed comments on January 24, 2001. Time Warner Telecom of the Mid-South, L.P. argued that BellSouth should be required to clarify the intent of the language so that it is consistent with the intent described³ in BellSouth's January 19th data request response.⁴

At the Authority Conference held on February 6, 2001, the Directors expressed concern that the customer could incur costs associated with interconnection two separate times, first for the CSA rates and again by indemnifying BellSouth, and that certain arrangements might result in the application of access charges.⁵ In the end, the Directors again voted to suspend the tariff an additional sixty (60) days, from February 20, 2001 through April 21, 2001, and encouraged BellSouth to work with the Authority Staff to reach an agreement concerning the reciprocal compensation language.

On February 9, 2001, the Authority issued a data request to BellSouth requesting proposals for rectifying the concerns expressed by the Directors at the February 6th Authority Conference. BellSouth responded on February 20, 2001.

³ The intent described is "to avoid protracted litigation such as occurred in North Carolina where the North Carolina Public Service Commission found that improper claims for reciprocal compensation had been made." *BellSouth Response to TRA Staff Request of December 29, 2000*, no. 1, p. 1 (Jan. 19, 2001).

⁴ See *Reply Comments Submitted on Behalf of Time Warner Telecom of the Mid-South, L.P.*, p. 2 (Jan. 24, 2001).

⁵ See Transcript of Proceedings, Feb. 6, 2001, p. 13-14 (Authority Conference).

Findings and Conclusions

Based upon careful consideration of the CSA and other filings in this docket, the Authority made the following findings and conclusions:

1. The purpose of this CSA is to provide Primary Rate Integrated Services Digital Network ("ISDN") service to the customer identified in the filing. Primary Rate ISDN service supports the simultaneous transmission of voice, data, and packet services on the same exchange access line.

2. The term of this CSA is thirty-six (36) months.

3. Through this CSA, BellSouth is offering the customer a thirty-five and three-tenths percent (35.3%) discount on recurring charges and a waiver of non-recurring charges.

4. In its October 23, 2000 cover letter included with the CSA filing, BellSouth agreed to notify the customer⁶ that upon early termination of the CSA without cause, the lesser of the following termination liability charges would apply:

- a. The amounts specified in the CSA the customer signed;⁷
- 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

⁶ 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, Oct. 24, 2000, p. 15 (Authority Conference).

⁷ An addendum to this CSA defines the applicable termination charges as follows:
the lesser of (A) the sum of the repayment of discounts received during the previous 12 months of the service, the repayment of any waived or discounted non-recurring charges set forth in Note 2 of the Rates and Charges Section of the Agreement, and the repayment of the pro-rated contract preparation charge set forth in Note 2 of the Rates and Charges Section of the Agreement; or (B) six percent (6%) of the total Agreement amount.

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. 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.

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

7. In its February 20, 2001 data request response, BellSouth agreed to notify the customer that the reciprocal compensation language will not apply with respect to the services provided in Tennessee under the CSA.

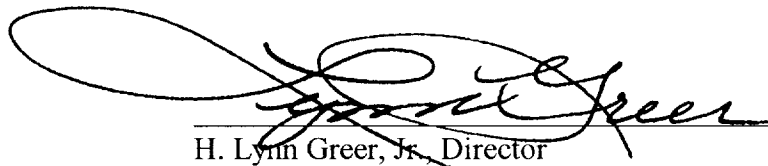
8. No parties sought to intervene in this docket.

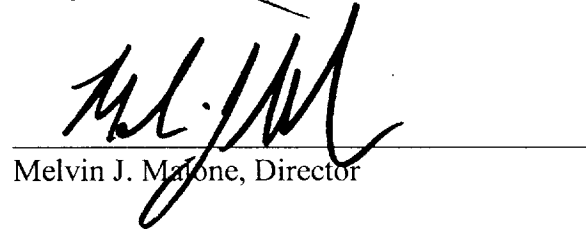
Based on the foregoing findings and conclusions, the Directors unanimously determined that the CSA in this docket should be granted contingent upon BellSouth notifying the customer that the terms and conditions of the reciprocal compensation language do not apply to this CSA and providing a copy of the notification to the Authority. The Directors also held that BellSouth shall not include the same reciprocal compensation language in future CSA contracts submitted to the Authority for approval.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc.'s Tariff No. 00-00942, which seeks approval of Contract Service Arrangement No. TN00-5669-00, is hereby granted contingent upon BellSouth providing the notification to the customer as set forth herein and providing a copy of such notification to the Authority.⁸


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary

⁸ On April 18, 2001, BellSouth filed copies of the notifications regarding reciprocal compensation and termination liability sent to the customer.