

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**JUNE 12, 2001**

<b>IN RE:</b>	)	
	)	
<b>BELLSOUTH TELECOMMUNICATIONS INC.'S</b>	)	<b>DOCKET NO.</b>
<b>TARIFF FOR CONTRACT SERVICE</b>	)	<b>00-01012</b>
<b>ARRANGEMENT (GA00-4575-00)</b>	)	

---

**ORDER GRANTING APPROVAL OF BELLSOUTH  
CONTRACT SERVICE ARRANGEMENT (GA00-4575-00)**

---

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on December 5, 2000 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. GA00-4575-00 ("CSA"). BellSouth filed Tariff No. 00-01012 on November 7, 2000, with a proposed effective date of December 7, 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 30 million dollars (\$30,000,000.00) in exchange for a twenty percent (20%) discount.

2. The term of this CSA is thirty-six (36) months with two one-year renewals upon mutual agreement of the parties. Th Authority has consistently required agency approval of all

extensions that would cause the term of the CSA to exceed thirty-six months and finds no reason to depart from that requirement in this docket.<sup>1</sup>

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 November 7, 2000 cover letter included with the CSA filing, BellSouth agreed to notify the customer<sup>2</sup> that upon early termination of the CSA without cause, the lesser of 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;<sup>3</sup>

---

<sup>1</sup> See *In re: BellSouth Telecommunications, Inc.'s Tariff for Contract Service Arrangement (GA99-6921-00)*, Docket No. 00-00500, *Order Granting Approval of Contract Service Arrangement (GA99-6921-00)* (Oct. 17, 2000).

<sup>2</sup> 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).

<sup>3</sup> Section X of the Volume and Term Agreement provides:

If [customer] desires to terminate the V&T Agreement prior to its expiration, [customer] must provide BellSouth written notice of such termination 30 days prior to the effective date of termination. Termination liability will be in accordance with the following:

A. If written notice of termination is delivered to BellSouth, BellSouth will bill Company the following termination charges:

(1) The amount of discounts received for the life of this Agreement or for the previous 12 months, whichever is less, and

(2) The prorated portion of the Contract costs, calculated as follows:  
Contract Costs = \$411,976 x (Contract Months Remaining/Total Contract Months)

B. The application of termination charges pursuant to this Section shall not affect the application of termination charges pursuant to the tariff or any other agreement.

C. [Customer] further acknowledges that it has options for its telecommunication services from service providers other than BellSouth and that it has chosen BellSouth to provide the services included in this Agreement. [Customer], therefore, agrees that if it terminates this Agreement of the services purchased pursuant to this Agreement, [customer] will be responsible for the termination charges set forth above. [Customer] however, will not be responsible for termination charges if a certified reseller of BellSouth local service resells the services contained within this Agreement to [customer] and such reseller executes a written document agreeing to assume all of [customer's] obligations to BellSouth under this Agreement.

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).

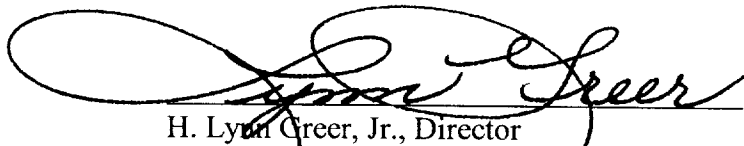
8. No parties sought to intervene in this docket.

Based on the foregoing findings and conclusions, the Directors voted unanimously to approve the CSA subject to the condition that BellSouth petition the Authority for approval of any agreement between BellSouth and the customer to renew the CSA after the expiration of the thirty-six (36) month term.

**IT IS THEREFORE ORDERED THAT:**

BellSouth Telecommunications, Inc.'s Tariff No. 00-01012, which seeks approval of Contract Service Arrangement No. GA00-4575-00, is hereby granted subject to the condition that BellSouth must petition the Authority for approval of any agreement between BellSouth and the customer to renew the CSA after the expiration of the thirty-six (36) month term.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director<sup>4</sup>

ATTEST:

  
K. David Waddell, Executive Secretary

<sup>4</sup> Director Malone has 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.