BOULT ▪ CUMMINGS
CONNERS ▪ BERRY PLC

Henry Walker
(615) 252-2363
Fax: (615) 252-6363
Email: hwalker@bccb.com

July 20, 2001

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

In re: *BellSouth Telecommunications, Inc. Tariff to Introduce CCS7 Access Arrangement Service*
Docket No. 01-00440

Dear David:

Please find enclosed the original and thirteen copies of the response of the Joint Petitioners to the Motion to Dismiss filed by BellSouth Telecommunications, Inc. in the above-captioned proceeding.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:
Henry Walker

HW/nl
Attachment
c: Parties

LAW OFFICES
414 UNION STREET · SUITE 1600 · P.O. BOX 198062 · NASHVILLE · TN · 37219
TELEPHONE 615.244.2582 FACSIMILE 615.252.6380 www.boultcummings.com

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In re: *BellSouth Telecommunications, Inc. Tariff to Introduce CCS7 Access Arrangement Service*

Docket No. 01-00440

RESPONSE TO MOTION TO DISMISS

The Joint Petitioners[1] submit the following response to the Motion to Dismiss filed by BellSouth Telecommunications, Inc. ("BellSouth") and further ask that the Tennessee Regulatory Authority stay, from this time forward, the effectiveness of the above-captioned tariff. Such a stay is mandated by T.C.A. §65-5-209(g) upon the filing of a "complaint" by a competing carrier.

On June 14, 2001, the Joint Petitioners requested that the Tennessee Regulatory Authority suspend the above-captioned tariff and open a contested case proceeding to investigate whether the tariff is just and reasonable and otherwise consistent with state and federal law. On June 26, 2001, the Authority orally announced that the tariff had become effective by operation of law on June 15, 2001, but asked BellSouth to file a response to the issues raised by the Joint Petitioners.

On June 29, 2001, BellSouth Telecommunications, Inc. ("BellSouth") filed a "Motion to Dismiss" Petitioner's request for that investigation on the grounds that (1) BellSouth is not presently recovering the costs of providing CCS7 service related to intrastate toll calls and that, under Tennessee's "price cap" statute, T.C.A.§ 65-5-209, BellSouth has the right to impose such

---

1 The Joint Petitioners include: XO Tennessee, Inc. , US LEC of Tennessee, Inc., Leap Wireless International d/b/a Cricket Communications and Time Warner of the Mid-South, L.P. Telecorp PCS, Inc. and ITC DeltaCom Communications, Inc. also join in this response. Their petitions to intervene will be filed shortly.

a tariff "as the company deems appropriate." Motion to Dismiss, at 4. The Motion also states that the "terms, conditions, and rates" of BellSouth's CCS7 Access Arrangement in BellSouth's FCC tariffs "are being mirrored" in this state filing and that the kind of objections raised by the Joint Petitioners were raised at the FCC but were resolved merely by some clarifying language on the "percent interstate use" factor. Motion to Dismiss, at p. 4, footnote 5.

Counsèl for BellSouth may not be aware of the following:

1. When BellSouth filed this tariff at the FCC, the federal agency asked that the tariff be re-structured so as to be revenue neutral. BellSouth therefore agreed to an offsetting rate reduction in local switching rates. As a BellSouth manager explained, "At the FCC's request, the monies gathered by the new tariffs will be offset by reductions to the interLATA carriers in local access charges." E-mail letter from Mark Robbins of BellSouth to Tom Hyde of Cbeyond (copy attached). In fact, BellSouth's filing with the FCC explained, "With this filing, signaling usage will no longer be bundled with local switching. CCS7 will be restructured such that billing for ISUP and TCAP will occur per signaling message. To reflect that previously bundled signaling usage will, under the restructure, be billed on a per signaling message basis, local switching charge are being reduced." Copy attached.

That is not the case in Tennessee. Here, BellSouth seeks to impose a charge for services which are presently included in other rates (*i.e.*, there is no separate charge for CCS7 services used in connection with making an intrastate toll call; that cost is currently recovered through rates for other services). BellSouth proposes no offsetting adjustment to existing rates. Under these circumstances, it is somewhat disingenuous for BellSouth to contend that its proposed state tariff is "mirrored" by the carrier's interstate tariff.

2. Counsel for BellSouth may also have failed to notice the following provision in Tennessee's price cap statute (T.C.A. §65-5-209):

> (g) Notwithstanding any other provision in this section, a price regulation plan shall permit a maximum annual adjustment in the rates for interconnection services that is capped at the lesser of one half (1/2) the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation, or the GDP-PI from the preceding year minus two (2) percentage points. An incumbent local exchange telephone company may adjust its rates for interconnection service only so long as its aggregate revenues generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by this subsection, provided that each new rate must comply with the requirements of §65-5-208 and the non-discrimination provisions of this title. <u>Upon filing by a competing telecommunications service provider of a complaint, such rate adjustment shall become subject to authority review of the adjustment's compliance with the provision of this section. The authority shall stay the adjustment of rates</u> and enter a final order approving, modifying or rejecting such adjustment within thirty (30) days of the complaint. [Emphasis added.]

BellSouth itself has filed this tariff as an amendment to the company's intrastate access tariffs and there would appear to be no dispute that the rate at issue is an "interconnection rate" which falls under the provisions quoted above. Therefore, BellSouth does <u>not</u> have power to file whatever rate "the company deems appropriate" but must demonstrate compliance with the requirements described in subsection (g).[2]

3. By implying that no one else has successfully challenged these tariffs, counsel for BellSouth may not have realized that similar filings have been withdrawn in Georgia and are under active investigation in Mississippi, Alabama and Florida.

4. BellSouth, not the Joint Petitioners, bears the burden of proof to demonstrate that this new interconnection rate is consistent with the requirements of the price cap statute. The

---

2 Since BellSouth proposes to create a wholly new "rate" rather than increase an existing rate, it may well be that the price cap statute is inapplicable. If BellSouth is allowed to introduce this tariff without violating the price cap statute, BellSouth could easily circumvent the statute in other situations by creating new, heretofore unknown rates for service that is already being provided.

Joint Petitioners have seen no evidence that the filing complies with those requirements and submit, furthermore, that the tariff is discriminatory and anti-competitive in violation of subsection (g).

Therefore, pursuant to the provisions of that subsection, the TRA "shall stay the adjustment of rates" and open a contested case proceeding to investigate these issues.

Respectfully submitted,

Henry Walker
Boult, Cummings, Conners & Berry PLC
414 Union St., Suite 1600
Nashville, TN 37219
Counsel for the Joint Petitioners

BELLSOUTH TELECOMMUNICATIONS, INC.

DESCRIPTION AND JUSTIFICATION

BELLSOUTH CCS7 ACCESS ARRANGEMENT

TRANSMITTAL NO. 588

April 30, 2001

1.0 INTRODUCTION

With this filing, BellSouth Telecommunications, Inc. hereinafter referred to as "BellSouth" is revising its F.C.C Tariff No. 1 relative to CCS7 Access Arrangement such that a charge will apply to all Integrated Switched Digital Network User Part (ISUP) and Transaction Capabilities Application Part (TCAP) messages. At the same time, local switching rates are being reduced to reflect the usage sensitive CCS7 restructure.

2.0 CCS7 ACCESS ARRANGEMENT - RESTRUCTURE

When a customer orders CCS7 Arrangement, the customer may currently choose BellSouth CCS7 Usage Feature as an Optional Feature for the billing of call set-up (ISUP) and non-call set-up (TCAP) messages. Alternatively, signaling usage is bundled with Feature Group D local switching. With this filing, signaling usage will no longer be bundled with local switching. CCS7 will be restructured such that billing for ISUP and TCAP will occur per signaling message. To reflect that previously bundled signaling usage will, under the restructure, be billed on a per signaling message basis, local switching charges are being reduced.

2.1 PRICE CAP INDICES AND AVERAGE TRAFFIC SENSITIVE (ATS) RATES

As displayed on the TRP provided with this filing and Appendix A, Workpaper SUM-A, the revisions proposed in this filing keep BellSouth within all allowable price cap limits. In addition, as shown in Workpaper TGT-1, this filing has no impact on the current ATS rate of $0.006197.

3.0 RATES AND ECONOMIC INFORMATION

With this filing, customers will begin being billed for ISUP and TCAP usage charges as as of June 15, 2001. This delay in billing is necessary in order to allow intrastate CCS7 tariffs to be filed in each of the states where BellSouth operates and to become effective on the same day as the interstate tariff.

4.0 TARIFF REVIEW PLAN (TRP)

Total SS7 demand was determined through the completion of two steps. Demand had to be developed for access messages and also for Third Party Provider messages.

First, to determine the number of query messages associated with interstate access demand, total 1999 interstate voice messages by call type were pulled from CABS statistical billing records. After obtaining the 1999 voice message demand, the quantity of query messages was obtained by multiplying the voice message demand by call type by the average number of ISUP and TCAP query messages associated with a call. The average number of ISUP and TCAP messages associated with a call is detailed in Telcordia's GR-246-CORE, SS7 technical reference documentation.

Second, since Third Party Providers are not billed local switching by BellSouth, Third Party demand was determined using a different method. In addition, BellSouth did not have any historical data regarding Third Party Provider voice message demand accessible from CABS statistical billing records. In order to gather this demand data, BellSouth identified Third Party Providers by their two-six code (the code which identifies each link-set with a carrier/customer), and then monitored the volume of SS7 messages over these link-sets using the Agilent Link Monitoring System. This monitoring system is employed by BellSouth for the purposes of collecting AMA data regarding SS7 usage (by ISUP and TCAP messages). Demand data was gathered in the February/March 2001 timeframe. The volume of messages for the observation period was then annualized. This annualized volume was then reduced by a rate of 5% annually, representing demand growth over the 1999/2000 time frame. This demand adjustment adequately represents the growth rate of SS7 usage across all accounts for BellSouth.

Appendix A Workpaper TS-1 shows the ISUP demand of 127,982,699,389 messages and TCAP demand of 20,419,008,994 messages. This demand generates revenue of $6,990,933 as shown in Appendix A Workpaper SUM-A. BellSouth proposes to offset this additional revenue by reducing Local Switching rates by $6,974,580 as shown in Appendix A Workpaper TS-1.

From: <NEdwards@itcdeltacom.com>
To: <HWalker@BCCB.COM>
Date: 7/18/01 3:49PM
Subject: FW: TCAP & ISUP Billing

----- Forwarded by Nanette Edwards/DeltaCom on 07/18/2001 03:43 PM -----

Tom Hyde
<tom.hyde@Cbe
yond.net>
07/13/2001
09:01 AM

To: "'nedwards@itcdeltacom.com'" <nedwards@itcdeltacom.com>
cc:
Subject: FW: TCAP & ISUP Billing

-----Original Message-----
From: Mark.Robbins@bridge.bellsouth.com
[mailto:Mark.Robbins@bridge.bellsouth.com]
Sent: Tuesday, May 29, 2001 4:58 PM
To: tom.hyde@Cbeyond.net
Cc: doberg@illuminet.com; William.French2@bellsouth.com;
julia.strow@Cbeyond.net; Mark.Robbins@bridge.bellsouth.com;
David.B.Veasey@bridge.bellsouth.com
Subject: RE: TCAP & ISUP Billing

Tom,

Here is the response from the SS7 SMEs concerning the SS7 tariff filing:

1) Pursuant to CC docket 96-95, BellSouth has filed a tariff to begin
billing on a per message basis for all SS7 messages handled by BellSouth
for
an
interconnecting customer. An interconnecting customer is defined as one
that
has a pair or a quad of SS7 links directly connected to one of BellSouth's
SS7
Gateway STPs. BellSouth will be charging the directly connected SS7
customer
for all SS7 messages defined in the tariff, whether they are associated
with
a
local or long distance call or whether they are non-call-associated
messages.
From BellSouth's perspective, the tariff was filed as "revenue neutral". At
the
FCC's request, the monies gathered by the new tariffs will be offset by
reductions to the InterLATA carriers in local access charges. It is the

FCC's
contention that, to this point, the InterLATA carriers had been paying the
way
for all SS7 capability and that now the costs would be more equitably
spread
across all interconnecting companies.

2) BellSouth will not be charging or billing Cbeyond for any SS7 messages
because Cbeyond does not have SS7 links connected to BellSouth.

3) Your SS7 provider will be required to provide BellSouth with the
Signaling
PIU and a Signaling PLU. These will be used to determine the per cent of
the
taxes on these revenues that go to the state and local governments and the
per
cent that go to the federal government. The rates for local, intraLATA,
interLATA, and non-call-associated signaling messages are the same.

Mark

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via U.S. Mail, postage prepaid, to the following on this the 20th day of July, 2001.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

Henry Walker