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REGULATORY AUTH.

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OFFICE OF THE  
June 25, 2001 EXECUTIVE SECRETARY

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

Re: *BellSouth Telecommunications, Inc. Tariff to Introduce 2001 Key Business  
Discount Program*  
Docket No. 01-00461

Dear David:

Enclosed please find the original and thirteen copies of the reply of the Southeastern Competitive Carrier's Association ("SECCA") to BellSouth in the above-captioned proceeding. Please call me or Whitney Malone with any questions.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

*Henry Walker by wlm w/ permission*  
Henry Walker

HW/wlm

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**In re: BellSouth Telecommunications, Inc. Tariff to Introduce 2001 Key Business Discount Program**

**Docket No. 01-00461**

**REPLY OF SECCA**

The Southeastern Competitive Carriers Association ("SECCA") files this reply to the brief submitted by Bell South Telecommunications, Inc. ("BellSouth") in opposition to SECCA's request that BellSouth's Key Business Discount Program ("Discount Program") be suspended pending further investigation by the Authority.

BellSouth makes three arguments.

**1. The tariff is not a "promotional" tariff.**

BellSouth itself, however, describes the tariff as a "promotion" on the company's website. See attached copy of the tariff summary provided by BellSouth. If BellSouth wishes to disclaim that characterization and treat this filing as a regular tariff, SECCA certainly has no objection.

**2. The tariff is not discriminatory.**

BellSouth states that, like the company's "Win Back" tariff, which was approved by the TRA last summer, the Discount Program is offered only in wire centers "in which BellSouth's competitors have chosen to aggressively compete with BellSouth." For that reason, the company claims the tariff does not unreasonably discriminate among customers.

Unlike BellSouth's "Win Back" tariff, however, which is offered only in the state's four large exchanges (Memphis, Knoxville, Chattanooga and Nashville), the Key Customer Discount Program is offered in twenty-three exchanges, including Gallatin, Columbia, Springfield, Cleveland, Mascot, Hendersonville, Dickson, Collierville, Goodlettsville, and other

smaller communities. SECCA contends that the tariff is discriminatory on its face unless Bell South can present evidence – not merely argue in a brief – that CLECs “have chosen to aggressively compete against BellSouth” in each of these exchanges. Otherwise, there is no reasonable basis for offering the tariff in some areas but not in others.

**3. It is “hypocritical” for SECCA to have agreed not to oppose the modified “Win Back” tariff last year while now opposing the Key Customer Discount Program.**

SECCA agreed to settle the Win Back tariff based on a compromise agreement reached with BellSouth. That does not prevent SECCA from raising similar concerns about this tariff.<sup>1</sup> Nor is SECCA required to take the same position in Tennessee that SECCA takes in other states. BellSouth, for example, refused in other states to accept the same modifications to the Win Back tariff that Bell South accepted in Tennessee.

Finally, SECCA stated in its petition that “it is SECCA’s belief that similar tariffs” are under investigation in other states. That information was based on communications from other attorneys who, as BellSouth correctly points out, apparently confused the Key Customer Discount Program with BellSouth’s controversial “Full Circle” promotion which has not been filed in Tennessee. SECCA apologizes to the Authority and to BellSouth for the confusion on that point.

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<sup>1</sup> The “judicial estoppel” argument made by BellSouth does not apply to this case. “Judicial estoppel” precludes a party who made sworn statements in one case from taking a contradictory position in another case. The related doctrine of “equitable estoppel” precludes a party from taking inconsistent positions, sworn or unsworn, in the same proceeding. See Sartain v. Dixie Coal, 266 S.W. 313 (Tenn. 1924). Neither doctrine prohibits a party who negotiated a settlement in one case from litigating similar issues raised in another case.

## CONCLUSION

Before approving this tariff, the Authority should require BellSouth to submit evidence of "aggressive competition" from CLECs in each of the exchanges listed in the tariff. In any exchange where BellSouth cannot make such a showing, the carrier should be required to address a competitive threat on a case-by-case basis through the CSA process.

Respectfully submitted,



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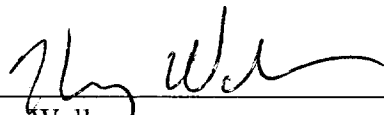
Counsel for SECCA

## CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2001 a copy of the foregoing document was served on the parties of record, via facsimile, addressed as follows:

Guy M. Hicks  
BellSouth Telecommunications, Inc.  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300

Patrick W. Turner  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street NE, Suite 4300  
Atlanta, Georgia 30375

  
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Henry Walker



## Notice

Notification Type:	Promotion
Jurisdiction:	TENNESSEE
Notice Date:	05/11/2001
Filing Package Number:	TN2001-057
Service Name:	2001 Key
Tariff Sections:	A13
Expected Issue Date:	05/25/2001
Expected Effective Date:	06/26/2001
Descriptive Narrative:	<p>This Special Promotion will begin June 26, 2001, and end June 25, 2002.</p> <p>This is an 18 or 36 month offering targeted to BellSouth customers in specific Wire Centers located in the BellSouth nine-state region. The SBS Key Customer Program will offer three separate discounts on the subscriber's bill. Subscribers must sign an 18 or 36-month agreement to participate in the program to receive the discounts specified. This promotion will be offered on an outbound and inbound basis, from June 26, 2001 through June 25, 2002.</p> <p><b>Program Eligibility</b></p> <ul style="list-style-type: none"><li>• Available to new and existing BellSouth business customers</li><li>• Monthly BST revenue for subscriber's location must be \$100 to \$3,000</li><li>• Subscriber's location must be served out of an eligible wire center.</li><li>• Subscriber must sign a 18 or 36 month agreement to receive the discounts</li></ul> <p><b>Promotion Elements</b></p> <ul style="list-style-type: none"><li>• Subscribers, who participate in the promotion and purchase new service during the 12-month promotional period, will receive a waiver on all line connection charges associated with the service order. This will include the Line Connection Charge (first and additional lines, line equivalents and trunks). In addition, they will receive 12 months' free BellSouth Voice Mail service.</li><li>• Subscribers meeting the eligibility requirements will receive the base discount and may be eligible to receive the hunting discount based upon having BellSouth hunting service.</li></ul> <p>Base discount: Specified % discount off subscriber's total billed revenue (TBR) from the GSST A and PLS B tariffs.</p>



## Notice

- Hunting discount: Subscribers that have hunting service are eligible to receive 50% or 75% off their monthly hunting charges in addition to the base discount depending on selected term. Subscriber may currently have or purchase the services during the enrollment period, June 26, 2001, through June 25, 2002, to qualify.
- Base customer discount is based on end-user monthly total billed BST revenue
- The total billed revenue consists of all total billed BST revenue (recurring, non-recurring and usage) excluding all unregulated charges including:
  - BellSouth Internet Service charges
  - Cingular Wireless
  - taxes, late payment charges, charges billed pursuant to Federal or State Access Service Tariffs, charges collected on behalf of municipalities (including, but not limited to surcharges for 911 service and dual party relay service), and charges for services provided by other companies.
- Participant must be a BST customer at the time of the discount to receive the discount. The discount will appear as a credit in the OC&C section of the subscriber's bill.
- At the end of the subscriber's agreed upon term, subscriber may renew the agreement for another term, under the same terms and conditions. Except NC & TN.
- In the event the subscriber terminates the contract; the subscriber must pay back all the discounts. This reimbursement for the base and hunting offer is to pay back all monetary discounts received as a result of being on this program. This payback will appear on the subscriber's final bill as a charge in the OC&C section. **Exception TN: TN Subscribers must pay BellSouth a termination liability equal to the lesser of: (1) the discounts received during the term of the contract; or (2) the discounts received during the previous 12 months.**
- The reimbursement for the Dedicated Internet Access offer is to pay back the months free that the Subscriber received as being a part of this program.
- Subscribers with multi-locations that are BTN'd or CLUB billed may have all locations participate as long as one location is in a Hot Wire Center and meets the revenue requirement.
- Subscribers with Centrex, MultiServ and ESSX with SLAs not meeting the per location revenue may have all locations participate as long as it is billed under the same account and at least one location is located in a Hot Wire Center

### **Promotion Restrictions**

- Customers with aggregate annual billing per state of BellSouth services exceeding \$35,000 are not eligible to participate in this tariffed promotion.
- Base and hunting discounts (for hunting service) apply only to BST total billed revenue within a state, not across states.
- Subscribers with Customer Service Arrangement (CSA) Product level Agreements are not eligible to participate with the Key Customer



## *Notice*

	<p>program.</p> <ul style="list-style-type: none"><li>• Customers participating in a Volume and Term Agreement CSAs are not eligible to participate in this promotion.</li><li>• This promotion may not be used concurrently with any previous Key Customer promotions, SBS Small Business Promotion (Hunting Term Promo), Business Discount Program (TN Only), Welcome Back! Winback, Full Circle and/or any future versions of those two programs.</li><li>• Customers currently participating in a previous version of the SBS Small Business Promotion (Hunting Term Promo) may migrate to this promotion without incurring any penalty from the other program specifications.</li><li>• BellSouth reserves the right to terminate this program at any time; provided, however, that subscribers participating in the program will be grandfathered for the term of their agreement.</li></ul>
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