

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 11, 2001

IN RE:

**BELLSOUTH TELECOMMUNICATIONS, INC.
TARIFF TO OFFER CONTRACT SERVICE
ARRANGEMENT (FL00-4090-00)**

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DOCKET NO. 01-00517

**ORDER DENYING APPROVAL OF BELLSOUTH
CONTRACT SERVICE ARRANGEMENT (FL00-4090-00)**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on July 10, 2001, on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. FL00-4090-00 ("CSA"). BellSouth filed Tariff No. 01-00517 on June 12, 2001, with a proposed effective date of July 12, 2001.

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 \$2.6 million dollars in exchange for a ten percent (10%) discount.

2. The term of this CSA is three (3) years with a two-year renewal option. Customer must notify BellSouth of its election to renew the CSA within thirty (30) days of the expiration of the three (3) year term.

3. This CSA contains two termination provisions. First, the customer is liable for charges related to the termination of the underlying specific service. These charges originate from the General Subscribers Service Tariff ("GSST") provision applicable to the underlying service and can amount to a ninety (90) to one hundred (100) percent buy-out.

4. Second, the customer is liable for charges related to the termination of the Volume and Term provisions of the CSA. In its June 12, 2001 cover letter included with this CSA filing, BellSouth agreed to notify the customer 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;¹
- 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. For service terms longer than four (4) years, tariff term plans and special contracts shall not permit the total termination liability charge to exceed twenty-four percent (24%) of the average annual revenues of the tariff term plan or special contract.

5. The CSA contains language indicating that the application of the termination charges found in the Volume and Term provisions do not affect the applicability of the termination charges related to the specific services.² Therefore, if the customer were to

¹ 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 "(a) Discounts received for the life of the Contract or for the previous 12 months, whichever is less, and (b) The prorated portion of the Contract Implementation and Tracking Costs, calculated as follows: Prorated Implementation and Tracking Costs = \$23,790.00 x (Contract Months Remaining/Total Contract Months)" (filed June 12, 2001). BellSouth BusinessSM Master Services Agreement, Attachment 1, Section I (1)(a)(b) (filed Jun. 12, 2001).

² *Id.*, Section I (2) (filed Jun. 12, 2001).

terminate all services and the Volume and Term arrangement under the CSA, the customer would be liable for the sum of termination provisions relative to the Volume and Term arrangement and all termination charges set forth in the GSST for the specific services.

6. 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.

7. 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.

8. 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).

9. No parties sought to intervene in this docket.

10. At the April 3, 2001 Authority Conference, the Authority adopted rules which govern CSA's including termination charges.³ Those rules were filed in TRA Docket No. 00-00702.

11. At an Authority Conference held on June 12, 2001, BellSouth reaffirmed its agreement to conform its CSAs to the proposed CSA rules prior to those rules being approved by the Tennessee Attorney General and becoming effective.⁴ Also, at an Authority Conference held on June 26, 2001, in Docket No. 01-00461, BellSouth agreed to revise its Tariff to Introduce

³ Transcript of Proceedings, Apr. 3, 2001, pp. 8-35 (Authority Conference). The portion of the rules related to competing carriers was revised at the May 15th Authority Conference. Transcript of Proceedings, May 15, 2001, pp. 15-20 (Authority Conference).

⁴ Transcript of Proceedings, Jun. 12, 2001, pp. 23-24 (Authority Conference).

2001 Key Business Discount Program ("Key Business Tariff") to be consistent with the CSA rules.⁵

12. At the Authority Conference held on July 10, 2001, BellSouth declined to modify the underlying tariff termination charges in Tariff No. 01-00517 to be consistent with the proposed CSA rules and BellSouth's revision of its Key Business Tariff in Docket No. 01-00461.

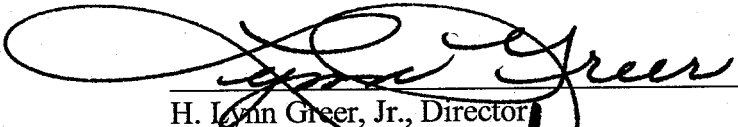
Based upon the foregoing, the Directors voted two to one⁶ to deny the CSA as filed.⁷

IT IS THEREFORE ORDERED THAT:

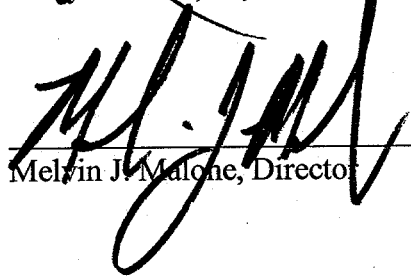
BellSouth Telecommunications, Inc.'s Tariff No. 01-00517, which seeks approval of Contract Service Arrangement No. FL00-4090-00, is hereby denied.

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Sara Kyle, Chairman



H. Lynn Greer, Jr., Director



Melvin J. Malone, Director

ATTEST:



K. David Waddell, Executive Secretary

⁵ Transcript of Proceedings, Jun. 26, 2001, p. 33 (Authority Conference).

⁶ Chairman Kyle voted to approve the CSA as filed.

⁷ On July 13, 2001, BellSouth filed a *Motion for Clarification or Reconsideration*. Though not specifically addressing this motion, Chairman Kyle and Director Malone at the July 24, 2001 Authority Conference affirmed their earlier votes.