

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 14, 2001

IN RE:

**BELLSOUTH TELECOMMUNICATIONS, INC.
TARIFF TO OFFER CONTRACT SERVICE
ARRANGEMENT (TN00-8871-00)**

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**DOCKET NO.
01-00654**

**ORDER GRANTING APPROVAL OF BELLSOUTH
CONTRACT SERVICE ARRANGEMENT (TN00-8871-00)**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference on August 21, 2001 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN00-8871-00 ("CSA"). BellSouth filed the CSA on July 25, 2001, with a proposed effective date of August 23, 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 four hundred fifty thousand five hundred seventy-six dollars (\$450,576.00) in exchange for a six and one-half percent (6.5%) discount.

2. The Executive Summary included with the CSA filing states that the term of the CSA is three (3) years. The CSA, however, does not include such a general statement. Instead, the Main Agreement defines the term as follows: "The term of the Main Agreement commences on the

Effective Date and ends on the date on which the term of the last Attachment hereto ends.”¹ Attachment 1, the only attachment to the CSA, provides: “The term of this Attachment may be extended for one or more additional years upon the mutual agreement of the parties.”² Lastly, Exhibit 2 to Attachment 1 lists the term as three (3) years.³

Based on the language of the CSA and Attachment, the Directors find that the term of the CSA is three (3) years with endless, optional renewals. Consistent with other decisions of this agency any optional renewal after the expiration of the three (3) year term is contingent upon approval by the Authority.⁴

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.

4. In its July 24, 2001 cover letter included with the 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:⁵

¹ BellSouth BusinessSM Master Services Agreement, para. II (filed Jul. 25, 2001).

² *Id.*, Attachment 1, Terms and Conditions for BellSouth Telecommunications, Inc. (“BST”) Regulated Services, para. P.

³ *Id.*, Exhibit 2 to Attachment 1, para. 1.

⁴ See Transcript of Proceedings, Nov. 7, 2000, p. 25 (Authority Conference).

⁵ In Docket No. 00-00720, the Authority approved a CSA contingent upon BellSouth notifying the customer of certain termination liability limitations. See *BellSouth Telecommunications Inc.’s Tariff for Contract Service Arrangement (MS99-8999-00)*, Order Granting Approval of BellSouth Contract Service Arrangement (MS99-8999-00), pp. 3-4 (filed Dec. 4, 2000). 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). During the January 23, 2001 Authority Conference, it was established that where the termination liability limitation language appears in the CSA or addendum thereto, BellSouth is not required to provide additional notification to the customer. See Transcript of Proceedings, Jan. 23, 2001, pp. 10-14 (Authority Conference). In this case, however, the notification is necessary because the limitation language in the proposed notice and the CSA or addendum thereto is not identical. On August 24, 2001, BellSouth filed with the Authority a copy of the notification letter sent to the customer.

1. The amounts specified in the CSA the customer signed;⁶
2. 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
3. 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.⁷

5. As to the termination liability for the underlying services, on August 1, 2001, BellSouth filed Tariff No. 01-00681 to amend its General Subscriber Services Tariff, Private Line Services Tariff, and Access Services Tariff to be consistent with rules adopted by the Authority in Docket No. 00-00702, *In re: Rulemaking Proceeding – Regulations for Term Arrangements for Telecommunications Services*. Pursuant to the Tariff, customers who enter into tariff term plans after April 3, 2001 are liable for termination charges equal to those included in the rules adopted in Docket No. 00-00702.⁸ Tariff No. 01-00681 became effective on August 15, 2001, thereby rendering any contradictory language in the CSA moot.

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.

⁶ The termination provisions in the CSA require that the customer provide written notice of termination sixty (60) days prior to the effective date of the termination and pay termination charges equal to "(1) Discounts received for the life of the Contract or for the previous twelve months, whichever is less, and (2) The prorated portion of the Contract implementation and tracking costs," BellSouth BusinessSM Master Services Agreement, Attachment 1, Terms and Conditions for BellSouth Telecommunications, Inc. ("BST") Regulated Services. para. 7.M. (filed Jul. 25, 2001).

⁷ Cover Letter from BellSouth Telecommunications, Inc., regarding tariff filing for Contract Service Arrangement TN00-8871-00 (rec'd. Jul.25 2001) (footnote 6 added).

⁸ See TRA Rule 1220-4-2-.59(4) (adopted Apr. 3, 2001, but not yet effective).

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).

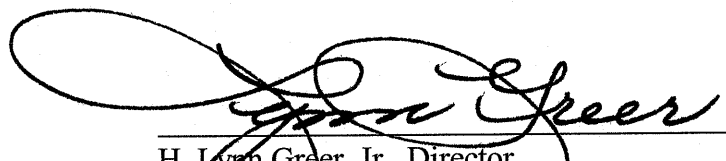
9. No parties sought to intervene in this docket.

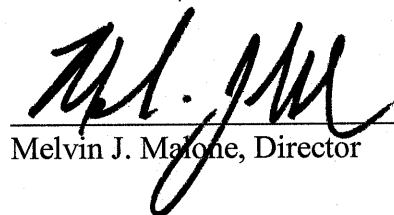
Based on the foregoing findings and conclusions, the Directors unanimously determined that the CSA in this docket should be granted.

IT IS THEREFORE ORDERED THAT:

BellSouth Telecommunications, Inc.'s Tariff No. 01-00654, which seeks approval of Contract Service Arrangement No. TN00-8871-00, is hereby granted.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary