BELLSOUTH

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

Re: *Notice of Rulemaking*
Docket No. 01-00972

Dear Mr. Waddell:

BellSouth provides these comments concerning the substance of proposed rules being considered by the Tennessee Regulatory Authority. BellSouth has substantial concerns regarding the proposed rules governing company-to-company complaints and urges that the current draft be revised to address these concerns.

As a general matter, rules establishing a process for seeking accelerated resolution of complaints are unnecessary. Complaining parties are currently able to bring motions for expedited relief before the Authority. In the event that a complaint is truly emergent, the complaining party can currently file a motion articulating the emergency nature of the matter and seeking emergency expedited relief. If the facts of a particular case will not support the granting of expedited relief, then the current schedules and deadlines established by existing TRA rules should be sufficient to resolve the complaint.

In any event, the type of accelerated docket described in the proposed rules would be of limited usefulness to the industry. Most disputes involving carrier-to-carrier complaints address highly technical issues and are extremely fact-specific. Accelerated procedures, with their inevitable limitation on the ability of the parties to thoroughly present evidence are not likely to be effective in resolving complex disputes. BellSouth knows of no specific events, general industry trends, or particular categories of disputes that cannot be adequately handled through the TRA's current complaint process.

BellSouth believes that many of the response times and time intervals included in the proposed rules will be inappropriate in the vast majority of company-to-company complaints. Experience has shown that, in the various instances in which the TRA has shortened the time for these types of complaints, it has been necessary for the parties to request additional time in order to establish the factual evidence regarding the complaint. Often these requests are joint requests in which even the complaining party recognizes the need for additional time. Consequently, the shortening of the schedule in such cases did not ultimately result in an earlier resolution of the complaint. Rather, the shortened schedule simply required the parties to prepare and litigate additional pleadings requesting more time. Given the often technical and records intensive nature of these types of complaints, it is rare that an abbreviated schedule permits adequate time for the parties to gather evidence concerning the complaint. This results both in the lack of opportunity for a full and fair hearing on the part of the respondent as well as a lack of opportunity for the complaining party to obtain full disclosure regarding the facts at issue in the complaint.

Specifically, BellSouth believes the following deadlines established by the rules, in particular, would be unduly burdensome and inappropriate in the vast majority of cases. First, proposed Rule 1220-1-2-.15(1)(b) requires the respondent to file a response to the complaint, not merely to the request for additional time, within seven days. Accordingly, even if the complaining party is not ultimately able to demonstrate the need for expedited ruling, by merely seeking an expedited ruling, the respondent is forced to respond within only seven days. In many instances, seven days will not be sufficient to investigate the facts underlying the complaint, and, consequently, respondent's answers will be less than substantive in nature.

Second, sub-part (1)(c) establishes that the Hearing Officer, upon review of the complaint and response, shall schedule a hearing upon determination that the complaint warrants expedited review. The Hearing Officer or Authority is required to provide only three business days notice of the date, time and location of the hearing. Accordingly, because such hearings must take place within 30 days of the filing of the complaint, very little time is permitted for discovery. The rule makes no reference to the number of days after answering the complaint on which the Hearing Officer or Authority must determine that the complaint warrants expedited ruling. Under this rule, a complaint could be filed on the 1st, an answer

filed on the 8th, and a ruling could be made by the Hearing Officer any time as to whether expedited review is warranted so long as the Hearing Officer notified the parties three business days in advance of a hearing. Under this scenario, the hearing would be required to take place by the 31st. By the time the Hearing Officer made that determination and scheduled the hearing, at most, the parties would have only three weeks to obtain all discovery and to file testimony or rebuttal testimony. Based on BellSouth's experience, BellSouth is concerned that few carrier-to-carrier complaints could be prepared for hearing on such a timetable without depriving the parties an adequate amount of time to seek and review discovery. Moreover, by limiting the amount of time to prepare pre-filed testimony, hearings held in such matters will be less organized and more confusing. In many instances, this will necessitate the filing of post-hearing briefs or data requests which, in turn, would prevent the resolution of the matter more quickly than the matter would have been resolved under the regular schedule. In short, the rules expedite the time between complaint and hearing, but do not necessarily assist in more expeditiously reaching a final conclusion to the complaint.

BellSouth is also concerned by the lack of specific and objective criteria to be used by the Authority in determining whether a particular complaint is an appropriate complaint for a shortened schedule. Without objective criteria, parties will have no guidance in determining whether a particular complaint warrants an expedited schedule and abuse of the expedited process easily could occur. BellSouth believes that in many cases this would result in the failure to provide due process as required by both Tennessee and federal law.

BellSouth further objects to the rules regarding a request for interim relief and the criteria set forth in the proposed rules for establishing interim relief. The granting of relief to a party merely on the basis of allegations, prior to a determination on the merits of those allegations, raises serious issues of due process and should be limited to truly extraordinary circumstances, consistent with Tennessee law governing preliminary injunctive relief. Accordingly, the complaining party should, in addition to the criteria set forth in the existing draft of the rules, be required to demonstrate a substantial likelihood of success on the merits of the complaint in order to obtain interim relief. As drafted, the rules make no provision for a written response to a request for interim relief. Moreover, the requirement of an evidentiary hearing within 48 hours of such complaints does not provide a meaningful opportunity to be heard in defense against such a claim. (Even the rule

seems to recognize the need for additional time. While the parties are required to present evidence on 48 hours notice, the Hearing Officer is given 10 days to consider the issue and rule). Accordingly, this requirement also raises serious issues regarding due process.

In light of the serious nature of BellSouth's concerns regarding the rules, BellSouth reserves the right to file additional comments as this matter progresses.

Cordially,

Joelle Phillips

JP/jej