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October 4, 2002

Honorable Sara Kyle
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

DOCKET NO.
02-01073

Re: Petition to Suspend BellSouth Tariff No. TN 2002-256 and to Convene a Contested Case Proceeding
Docket No. 02-01073

Dear Chairman Kyle :

Enclosed please find the original and fourteen (14) copies of the Petition to Suspend Tariff and to Convene a Contested Case Proceeding filed on behalf of the CLEC Coalition in the above-captioned proceeding. Also enclosed is a check in the amount of $25.00 to cover the filing fee.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker
Henry Walker

HW/nl
c: Guy Hicks, BellSouth Telecommunications, Inc.

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100071-003
10/4/2002

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: PETITION TO SUSPEND BELLSOUTH TARIFF NO. TN2002-256 AND TO CONVENE A CONTESTED CASE PROCEEDING	))))	DOCKET NO. 02-01073

CLEC COALITION PETITION TO SUSPEND TARIFF AND TO CONVENE A CONTESTED CASE PROCEEDING

The CLEC Coalition[1] submits the following petition requesting that the Tennessee Regulatory Authority ("TRA") suspend the above-captioned tariff and open a contested case proceeding to investigate whether the tariff is just and reasonable and consistent with state and federal law.

BACKGROUND

BellSouth Telecommunications, Inc. ("BellSouth") has filed a proposed "SWA Pricing Flexibility" tariff, scheduled to become effective on October 14, 2002. The tariff permits some long distance carriers, but not others, to pay access charges[2] at a discounted rate. The new tariff is, for all practical purposes, identical to the "SWA Contract Tariff" which BellSouth filed on June 28, 2002 and then withdrew, without explanation, on August 12, 2002. The withdrawal may have been the result of (1) the rejection of the proposed tariff by the North Carolina Public

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[1] At this time, the Coalition members are Birch Telecom, Inc and AT&T Communications of the South Central States, Inc.

[2] When a customer dials a long distance call, the customer's local telephone company first delivers the call to the customer's long distance carrier. The long distance carrier pays "originating" access charges to the local carrier for delivering the call. Similarly, at the other end of the call, the long distance carriers pays "terminating" access charges to compensate the receiving party's local carrier for delivering the call to its final destination. Such charges constitute a significant proportion of the total cost of a long distance call and, therefore, have a significant influence on long distance rates.

Service Commission which found the tariff "biased" and "not in the public interest," (2) a petition to intervene filed by the CLEC Coalition which pointed out that the tariff had apparently been designed for the purpose of giving one, particular interexchange carrier ("IXC") an advantage over others and is contrary to rulings of the FCC, or (3) the issuance of a TRA Staff data request which asked questions about whether the tariff was discriminatory and whether the proposed discounts are cost justified. BellSouth first delayed answering the request and then withdrew the tariff without ever responding to the Staff's concerns.

Now BellSouth has refiled the tariff. It has been amended and given a different caption, perhaps to make it appear that the substantive problems in the earlier filing have been addressed. But the changes are superficial. The problems remain and BellSouth must be made to address them.

1. The tariff is still designed to benefit a single IXC with whom BellSouth has apparently negotiated, or is in the process of negotiating, a discounted rate for access charges. By discriminating in favor of one IXC over others, the tariff gives that IXC a significant competitive advantage in violation of T.C.A. § 65-5-124 (which requires BellSouth to provide "non-discriminatory interconnection") and T.C.A. § 65-5-203(a) (which requires that the proposed tariff changes be "just and reasonable.")

With some simple arithmetic, it is easy to see that both the earlier tariff and the current one were designed to benefit the same IXC. BellSouth's earlier tariff applied to an unnamed IXC with minimum annual usage of "216,442,537" minutes and rewarded the carrier with one discount if the carrier's minutes grew up to 220,771,388 minutes, a higher discount if the minutes grew up to 238,086,791, and the highest discount if the minutes grew up to 281,375,299. BellSouth provided no explanation as to why the carrier had chosen these particular numbers, but they were obviously designed with a particular IXC in mind.

The amended tariff accomplishes the same result but in a disguised fashion. A carrier with minimum usage of between 100 million and 500 million minutes of use (such as the intended beneficiary) is rewarded with one discount if the carrier's minutes grow to "1.02" of the minimum, a higher discount if the minutes grow to "1.10" of the minimum, and the highest discount if the minutes grow to "1.30." The growth parameters in the new tariff are precisely the same as the growth parameters in the earlier tariff. In other words, a carrier whose minutes grow from "212,442,537" to "220,771,388" is the same as growing to "1.02" of the minimum; growing to 238,086,791 is the same as growing to "1.10"; growing to 281,375,299 is equal to growth to "1.30."[3]

The tariff is still designed, in other words, to benefit the same carrier for whom the first tariff was designed. It is discriminatory on its face.

2. Contrary to the representations made by BellSouth in the "Executive Summary," this is not a "volume discount" tariff; it is a "growth discount" tariff. Under this tariff, only an IXC whose minutes of use are steadily increasing will receive any discounts. Other IXCs <u>with identical total usage but with flat or declining minutes</u> will receive no discounts. The FCC has repeatedly held that there is no cost justification for this kind of "growth discount" and has rejected such tariffs as discriminatory. *See "LEC Pricing Flexibility Order* (FCC 99-206, 14 FCC Rcd 14,221, ¶¶ 134-135 (1999).[4]

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3 Unlike the first tariff, the revised tariff has two higher rate bands for carriers with more than 500,000 million minutes of usage. Otherwise, the arbitrary growth parameters are identical to the first rate band. One suspects these two higher bands are simply window dressing to disguise the fact that the first band — indeed, the whole tariff — is actually intended to benefit only one IXC.

4 "Growth discounts," as defined by the Commission, are "pricing plans under which incumbent LECs offer reduced per-unit access service prices for customers that commit to purchase a certain percentage above their past usage, or reduced prices based on growth in traffic placed over an incumbent LEC's network." *Access Charge*

(footnote continued on following page ...)

Given that large interexchange carriers have declining minutes of use, BellSouth's proposed tariff discriminates against interexchange carriers such as AT&T in favor of smaller carriers with growing minutes. These smaller, growing carriers may obtain a large volume discount and pay lower access charges than are available to AT&T even though AT&T's total access minutes are significantly larger than those of the smaller carrier. Relative volume growth, however, is not a justifiable basis for providing a rate discount, because a low base makes significant growth percentages possible even if the absolute volume growth is insignificant and provides no economies to BellSouth. Instead, to the degree any discounts are appropriate, they should be based on absolute volumes, as such volumes make possible the economies of scale that would justify the discount.

REQUESTED RELIEF

Given the unusual nature of this tariff and the serious legal and policy questions the tariff raises, the Petitioners strongly urge the Authority to exercise its statutory power under T.C.A. § 65-5-203(a) to suspend the tariff pending further investigation and to require BellSouth to prove — in an evidentiary hearing — that this tariff is "just and reasonable" and to justify departure from the non-discriminatory regulatory principles that have governed the application of access charges for nearly two decades.

Therefore, pursuant to T.C.A. § 65-5-203(a) and the rules of the TRA, the Petitioners submit the following:

1. Petitioner AT&T Communications of the Southern States, LLC ("AT&T") is located at 1200 Peachtree Street, NE, Suite 8100, Atlanta, Georgia 30309.

(... footnote continued from previous page)
Reform, Notice of Proposed Rulemaking, CC Docket No. 96-262, 11 FCC Rcd 21354, 21437-38 (1996) ("*Access Charge Reform NPRM*").

Petitioner Birch Telecom of the South, Inc.("Birch") is located at 2020 Baltimore Avenue, Kansas City, Missouri 64108.

2. Each Petitioner is authorized to provide, and does provide, intrastate long distance telephone service in Tennessee and purchases switched access services from BellSouth.

3. BellSouth is located at 333 Commerce Street, Suite 2101, Nashville, Tennessee, 37201-3300.

4. BellSouth is authorized to provide, and does provide, local telephone service in Tennessee, including switched access services.

5. BellSouth's proposed "SWA Pricing Flexibility Tariff " is unjust, unreasonable, discriminatory, and anti-competitive in violation of state law.

6. The TRA has jurisdiction over this matter pursuant to T.C.A. §§ 65-5-203(a), 65-5-210(a), 65-4-117(l), 65-4-124, and 65-5-208(c).

7. Petitioners request that the TRA, pursuant to its statutory authority, suspend BellSouth's proposed tariff and open a contested case proceeding to address the issues raised in this Petition and to take whatever additional action is warranted by the evidentiary record and applicable law.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: ______________________

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Counsel for CLEC Coalition

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 4th day of October, 2002.

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

Henry Walker