BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

February 25, 2003

IN RE:	Petition to Suspend BellSouth's "Welcoming Reward" Tariff and Open a Contested Case Proceeding	))) Docket No. 03-00060

RESPONSE OF CLEC COALITION TO AMENDED TARIFF

The CLEC Coalition[1] submits the following response to the amended "Welcoming Reward" tariff filed on February 21, 2003, in the above-captioned proceeding.

ARGUMENT

In response to concerns raised by the Coalition, the Consumer Advocate Division, and individual Directors, BellSouth has amended its Welcoming Reward tariff to make it clear that the tariff is a long-term, not a short-term, promotion. The tariff offers a "new" small business customer a $100-per-line bonus if the customer agrees to a twelve-month contract. Under both the FCC's rules and the TRA's rulings, BellSouth must make the promotion available for resale at the promotional rate, less the applicable wholesale discount. In this case, the promotional rate would be $31.37 per month and the wholesale rate, using a 16% discount, would be $26.35. Assuming that BellSouth offers the tariff for resale in this manner[2], that would apparently moot the resale issue raised by the Coalition.

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[1] At this time, the Coalition includes Access Integrated Networks, Inc., Cinergy Communications Company, Xspedius Corporation, and AT&T Communications of the South Central State, Inc.

[2] It is not clear from BellSouth's February 21 filing precisely how BellSouth intends to calculate the wholesale rate for this tariff. Although the language of the tariff itself appears consistent with BellSouth's resale obligation, the cover letter accompanying the tariff states that BellSouth will "make the $100 bill credit available <u>at the wholesale discount</u> to reselling CLECs," (emphasis added) implying that the CLECs will not receive the full, $100 promotional discount off the retail rate. BellSouth should be asked to make clear that a reseller will be able to purchase the tariff at the discounted promotional rate less the wholesale discount.

The new filing does not, of course, resolve – or even address – the problem of offering this promotion only to customers who do not currently have BellSouth service while denying these discounted rates to existing BellSouth customers.

There can be no legal justification for offering the $100 bonus to a "new" customer who switches his two lines from a CLEC to BellSouth while refusing to give a bonus to an existing BellSouth customer who orders two additional lines. For all relevant purposes, the two customers are identical. As BellSouth witness John Rusilli recently testified before the TRA, BellSouth will make any contract service arrangement ("CSA") available, under the same terms and conditions, to any "similarly situated" customer. Mr. Rusilli defined "similarly situated" as follows:

> End users are similarly situated if their quality of use and length of contract, and the rates, terms and conditions of services, are the same.

Direct testimony of John Russilli in Docket 97-00309, (the "271" docket), filed April 26, 2002, at p. 108.

In other words, BellSouth itself understands that two customers are similarly situated if each receives a similar volume and quality of service under like terms and conditions. BellSouth's argument in this proceeding that a new customer who receives exactly the same service as an existing customer is not "similarly situated" is flatly inconsistent with the company's sworn testimony presented to the agency less than a year ago.[3]

Behind BellSouth's inconsistency lies a more troubling concern. There can only be one reason why BellSouth would offer a bonus to a new customer but not to a current customer who

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[3] In an earlier filing, the Coalition quoted similar language defining "similarly situated" from BellSouth's SGAT. It turned out that the SGAT definition was contained in an earlier version of the SGAT, not the most current version. Mr. Russilli's testimony demonstrates, however, that BellSouth's understanding of the term has not changed.

orders new lines: the real purpose of the "Welcoming Reward" program is not to sell more access lines but to damage the company's competitors.

Obviously, BellSouth benefits from a revenue perspective just as much by selling two business lines to a new customer as by selling two additional lines to an existing customer. The carrier would presumably be eager to do either, or both. But BellSouth is unwilling to offer these $100-a-line bonuses merely to sell more access lines to existing customers. The bonuses are paid only for taking business away from competing carriers. BellSouth is using its market and financial power in a concerted effort, not to make money, but to put its competitors out of business. Tennessee regulatory law prohibits "predatory pricing, price squeezing, price discrimination, . . . and other anti-competitive practices." T.C.A. § 65-5-208(c). Clearly, the Authority should take a closer look at this tariff.

CONCLUSION

These issues of discrimination and anti-competitive conduct raise serious, heretofore unresolved, questions of regulatory law and policy that need to be addressed. Since the Authority has already decided not to suspend the tariff, there is no reason not to open a contested case proceeding for that purpose. Surely, the fifty-plus pages of filings that have already been made in this case and the hours of oral argument at the last two TRA conferences are sufficient to demonstrate, if nothing else, that these are serious matters which the agency is obliged to consider.

Respectfully submitted,

By: ______________________

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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 25 day of February, 2003.

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