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Reply to:
Consumer Advocate and Protection Division
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July 7, 2003

Honorable Deborah Taylor Tate
Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

RE: TARIFF FILING TO MODIFY LANGUAGE REGARDING SPECIAL CONTRACTS, DOCKET NO. 03-00366

Dear Chairman Tate:

Enclosed is an original and thirteen copies of the Consumer Advocate and Protection Division's Brief Rebutting Certain Positions Taken by BellSouth in its Brief Filed on June 30, 2003. Kindly file same in this docket. Copies are being sent to all parties of record. If you have any questions, kindly contact me at (615) 741-8733. Thank you.

Sincerely,

Vance Broemel

Vance Broemel
Assistant Attorney General

Enclosures
cc: All Parties of Record

#66649

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE:	)	
	)	
TARIFF FILING TO MODIFY LANGUAGE REGARDING SPECIAL CONTRACTS	)	**DOCKET NO. 03-00366**
	)	
	)	

CONSUMER ADVOCATE'S BRIEF REBUTTING CERTAIN POSITIONS TAKEN BY BELLSOUTH IN ITS BRIEF FILED ON JUNE 30, 2003

Comes now Paul G. Summers, the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of the Attorney General (hereinafter "Consumer Advocate"), pursuant to the *Notice of Filing* issued by the Tennessee Regulatory Authority (hereinafter "TRA") on June 24, 2003, and hereby files the *Consumer Advocate's Brief Rebutting Certain Positions Taken by BellSouth in Its Brief Filed on June 30, 2003.*

I. INTRODUCTION

On June 30, 2003, BellSouth Telecommunications, Inc. (hereinafter "BellSouth") filed *BellSouth Telecommunications, Inc.'s Brief Regarding Time for CSAs to Become Effective Pursuant to Chapter 41 of the Tennessee 2003 Public Acts* (hereinafter "BellSouth Brief"). In its Brief, BellSouth takes certain positions with which the Consumer Advocate either disagrees or finds misleading. The Consumer Advocate therefore submits the following rebuttal for consideration by the TRA as the agency deliberates and decides whether BellSouth's above-styled tariff should be approved.

II. REBUTTAL

The Consumer Advocate submits that the following positions taken by BellSouth are incapable of being defended under Tennessee law:

1. That TRA rules do not require a tariff for a Contract Service Arrangement ("CSA") or "special contract". *See* BellSouth Brief at pp. 2-6, 20.

2. That the new CSA law's provisions regarding elimination of price discrimination and creation of a presumption of validity for CSAs signals the clear intent of the Legislature to ensure immediate effectiveness for all CSAs. *See* BellSouth Brief at pp. 6-10.

3. That action taken at the TRA conference held on June 2, 2003, is effective to change the manner in which the agency regulates all future CSAs. *See* BellSouth Brief at pp. 12-15.

For the reasons discussed hereinafter, the TRA should reject these untenable arguments.

A. TRA rules provide that CSAs must be filed as tariffs and that CSAs must be filed at least 30 days before their effective date.

Whether CSAs are technically regarded as tariffs or not, it is clear that TRA Rule 1220-4-1-.03, which regulates the tariff contents of incumbent carriers such as BellSouth, requires the rates and terms of CSAs to be filed in the company's tariff. As more fully set forth in the Consumer Advocate's June 30th brief, CSAs state the rates and charges for a class of service (i.e., a category or description of service) and CSAs further provide for rules and regulations that in some manner affect the rates charged or to be charged and that define the extent or character of the service to be given. Accordingly, the rates and terms of service contained in CSAs must be filed as tariffs pursuant to TRA regulations — just as they always have been in the past.

Assuming *arguendo* that CSAs are not required to be filed as tariffs, these contracts must still

be filed with the TRA at least 30 days prior to their effective date pursuant to current TRA rules. TRA Rule 1220-4-1-.04 states that all tariffs, rate schedules or supplements thereto containing any change in rates, tolls, charges or rules and regulations of service must be filed at least 30 days before the effective date of such changes. If CSAs are not tariffs, they would certainly constitute rate schedules and/or supplements thereto that contain a change in the rates, tolls, charges and rules and regulations of service. Additionally, TRA Rule 1220-4-1-.06(4) states that all tariffs and supplements affecting Tennessee intrastate business shall be filed at least 30 days before their effective date. If CSAs are not tariffs, they would certainly constitute supplements affecting Tennessee intrastate business. Accordingly, even if one takes the position that CSAs are not required to be tariffed, they still must be filed at least 30 days before their effective date pursuant to these regulations.

As discussed in the Consumer Advocate's June 30th brief, nothing in Chapter No. 41 of the 2003 Tennessee Public Acts expressly or impliedly repeals or abrogates the TRA's rules concerning the tariffing and filing requirements of incumbent carriers. As discussed in section II.C.2., *infra*, the TRA has not acted to amend or repeal any of its rules. Thus, the TRA's current rules which regulate the tariffing and filing of CSAs remain in full force and effect.

BellSouth takes a strange and unfamiliar position in this docket as it acknowledged only seven months ago that, pursuant to the TRA's rules, CSAs are filed as tariffs and that the TRA evaluates CSAs as it would any other tariff filing. *See Comments in Response to November 27, 2002 Notice of Filing*, TRA Docket No. 00-00702 at p. 2 (Dec. 5, 2002) (submitted by BellSouth on behalf of participating Industry Members). BellSouth's notion that the TRA's tariffing and filing rules do not control CSAs is nothing more than a recently and conveniently-created proposition to support

today's misguided argument. BellSouth's contention, that it filed CSAs in accordance with these regulations solely for the purpose of assuring that its CSAs were not unduly discriminatory, flies in the face of the plain meaning of the rules themselves; the TRA's procedures for reviewing and approving CSAs; BellSouth's prior position concerning the tariffing requirements for CSAs; BellSouth's instant tariff which provides that CSAs will not be unduly discriminatory; and the whole history of CSAs as recorded in the numerous dockets dealing with them over the past six years. As any informed observer would know, current TRA regulations have controlled the tariffing and filing of CSAs for many years.

The TRA does not have the discretion to simply decide that these rules should not be applied to CSAs anymore. Administrative agencies are bound by the rules that they promulgate, and agencies cannot arbitrarily disregard their rules or apply them indiscriminately. Agencies remain bound by their rules until they are amended or repealed in the manner provided for by law. *See* 2 Am. Jur. 2d *Administrative Law* § 237 (May 2003). This well-known principle of administrative law is codified in Tenn. Code Ann. § 65-2-102(a)(3), which states in pertinent part, "that the authority shall abide by any such rule adopted by it, until it shall have been changed in the manner provided for in this chapter."

B. The new CSA law does not signal the Legislature's clear intent that CSAs are to become effective immediately.

BellSouth argues that, by enacting Public Chapter No. 41 and removing price discrimination as legal ground to challenge the validity of CSAs, the Legislature clearly intended that CSAs are to become effective immediately upon filing. BellSouth seeks to unduly expand the scope of Public Chapter No. 41 and have this new legislation construed in a manner that conflicts with other legal

requirements. Accordingly, BellSouth's position is contrary to familiar rules that guide our interpretation of the law.

In construing statutes, courts must ascertain and give effect to the legislative intent. *See Blount County Educ. Ass'n v. Blount County Bd. of Educ.*, 78 S.W.3d 307, 314-315 (Tenn. Ct. App. 2002). Whenever possible, legislative intent is to be ascertained from the natural and ordinary meaning of the language used, without forced or subtle construction that would extend the meaning of the language. *See Id.* at p. 315. Additionally, laws should be construed in favor of each other so as to provide for their harmonious and concurrent operation. *See Id. See also Nichols v. Benco Plastics, Inc.,* 225 Tenn. 334, 469 S.W.2d 135, 137 (1971).

The purpose and effect of Public Chapter No. 41 are clear from the words that are written therein. This new legislation: (a) creates a presumption of validity of the rates and terms negotiated between telecommunications providers and business customers; (b) places the burden of rebutting the presumption with substantial evidence upon the TRA or the complainant; and (c) removes price discrimination as a basis for rebutting the presumption of validity or challenging the legality of CSAs. This is the plain meaning of the language used in Public Chapter No. 41, and we therefore must presume that the Legislature "intended what it wrote and meant what it said." *Worley v. Weigel's, Inc.* 919 S.W.2d 589, 593 (Tenn. 1996). To give this new law any additional purpose and effect would result in extending its scope beyond the natural and ordinary meaning of the language used.

BellSouth's argument, that CSAs should be effective upon filing because the new law removes price discrimination as legal ground for complaint, fails to take into account that such

removal of price discrimination does not end any further review or inquiry into the legality of CSAs.[1] Under the new CSA law, such contracts are still subject to review in order to determine whether they "violate applicable legal requirements other than the prohibition against price discrimination." 2003 Tenn. Pub. Acts 41. Accordingly, a holding that Public Chapter No. 41 clearly signals the Legislature's intent to make CSAs effective immediately upon filing would stretch the new law well beyond its intended scope.[2] Moreover, holding that the new law supports the immediate effectiveness of CSAs would place it in conflict with existing laws and regulations which require CSAs to be filed at least 30 days before they are to become effective. The Consumer Advocate therefore submits that any such holding would run afoul of the above-cited rules for construing statutory language.

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[1] *See Second Report and Recommendation of Hearing Officer*, TRA Docket No. 00-00702 at p. 7 (May 5, 2003) ("The new CSA law supports and continues the TRA's discretion to take action when necessary to ensure that CSAs work to improve the competitive marketplace.")

[2] BellSouth's assertion that enactment of the new law militates against any further regulation or "policy review" of CSAs is without merit. Public Chapter No. 41 merely removes price discrimination as a ground for challenging the validity of CSAs and creates a presumption of validity for the rates and terms contained in CSAs. The new law specifically provides that this presumption can be rebutted and set aside upon substantial evidence that CSAs violate applicable legal requirements. Public Chapter No. 41 did not sanction the use of CSAs under any and all circumstances as BellSouth's argument seems to suggest. The rates and terms contained in CSAs must satisfy all the legal and policy requirements existing before enactment of Public Chapter No. 41, except for the policy against price discrimination. For instance, under the provisions of the new law, CSAs must satisfactorily meet: (1) the state's pro-competitive policies for delivery of telecommunications services, *see, e.g.,* Tenn. Code Ann. §§ 65-4-123 and 65-5-208(c); (2) the state's public records policy, *see* Tenn. Code Ann. § 10-7-503(a); (3) the state's common-law contract doctrines regarding, among other things, liquidated damages, *see, e.g., V.L. Nicholson Co. v. Transcon Inv. and Fin., Ltd., Inc.,* 595 S.W.2d 474 (Tenn. 1980), *Guiliano v. Cleo, Inc.,* 995 S.W.2d 88 (Tenn. 1999); and (4) the various policy and legal requirements that the federal Telecommunications Act of 1996 and related rules and orders of the Federal Communications Commission place on the service arrangements of incumbent carriers. It is therefore appropriate for the TRA to continue its legal and policy review of CSAs, and it is also appropriate for the agency to hear any valid complaint concerning CSAs.

In its Brief, BellSouth urges the TRA to look behind the plain meaning of the words used in the statute and instead rely on its legislative history and statements of sponsors. However, this would be a completely unwarranted exercise in this instance. The "search for the meaning of statutory language must always begin with the statute itself." *BellSouth Telecommunications, Inc. v. Greer,* 972 S.W.2d 663, 673 (Tenn. Ct. App. 1997). Courts resort to legislative history "[w]hen the words of a statute are ambiguous or when it is just not clear what the legislature had in mind." *Id.* Moreover, reliance on legislative history to construe a statute is "a step to be taken cautiously." *Id.* "The subjective beliefs of legislators can never substitute for what was, in fact, enacted. There is a distinction between what the legislature intended to say in the law and what various legislators, as individuals, expected or hoped the consequences of the law would be." *Id.* "Even the statements of sponsors during legislative debate should be evaluated cautiously. These comments cannot alter the plain meaning of a statute, because to do so would open the door to the inadvertent, or perhaps planned, undermining of statutory language." *Id.* at p. 674 (*citations omitted*).

Here, as discussed above, the purpose and effect of Public Chapter No. 41 are evident from the plain and ordinary meaning of the language used. An examination of legislative history and statements of sponsors cannot morph Public Chapter No. 41 into what BellSouth expected or hoped the consequences of the new law would be. The Legislature has said "what it means and means in [Public Chapter No. 41] what it says there." *Id* at p. 673.

C. The TRA's June 2nd vote cannot effectuate a change in the procedures for regulating future CSAs.

BellSouth takes the position that the TRA's action at the Authority Conference held on June 2, 2003, has put to rest any outstanding issue concerning the immediate effectiveness of CSAs. The

Consumer Advocate disagrees. It is our view that the TRA did not intend to change any procedures for regulating CSAs at the June 2nd conference. If, as BellSouth suggests, the TRA did intend to take such action, it is void on the following two grounds: the action did not comply with the notice requirements of the Open Meetings Act or the Uniform Administrative Procedures Act ("UAPA").

1. If at the June 2nd conference the TRA intended to decide the issue concerning the timing of effectiveness for all future CSAs, such decision is void because it does not comply with the notice requirements of the Open Meetings Act.

Any action taken by a public body not in accordance with the Open Meetings Act is void and of no effect. *See* Tenn. Code Ann. § 8-44-105. The Open Meetings Act requires that adequate public notice be given. *See* Tenn. Code Ann. § 8-44-103. "Adequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public." *Memphis Publ'g Co. v. City of Memphis*, 513 S.W.2d 511, 513 (Tenn. 1974). "The contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken." *Englewood Citizens for Alternate B v. Town of Englewood*, No. 03A01-9803-CH-00098, 1999 WL 419710 at *2 (Tenn. Ct. App. June 24, 1999). In *Englewood* the Court of Appeals held that the town's written notice, which read "Letter to State concerning HWY 411", was not adequate public notice for the town commissioners to reconsider the path of Highway 411. *See Id.* at *4. Like written notices, any announcement of a public meeting must specifically address items that will be discussed extensively. *See Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 436 (Tenn. Ct. App. 1990) (finding that failure to announce at a previously held meeting that grade clustering would be discussed extensively at a future meeting was insufficient public notice for the school board to consider grade clustering at the future meeting). *Englewood* and *Neese* teach

us that a public body must take care in fashioning the contents of its public notices, and that such contents, whether written or spoken, must be designed to reasonably inform members of the public and interested parties of the actions that the public body proposes to take at its future meetings.

Accordingly, the Consumer Advocate cannot agree with BellSouth that, relative to any decision concerning the effectiveness of CSAs, the published Agenda for the June 2nd conference "complied in all respects with the requirements of the Open Meetings Act." BellSouth Brief at p. 13. We have examined the contents of this Agenda and find no reference to the TRA's intention to discuss the provisions of Public Chapter No. 41 and/or its impact upon the agency's procedures for filing CSAs. The Agenda therefore could not have been written or designed to reasonably inform the public that the TRA intended to address this issue at the June 2nd conference.

Nor can the Consumer Advocate agree with BellSouth that the comments of Director Miller, or any other Director, at the Authority Conference held on May 12, 2003, provided adequate public notice that the procedures for dealing with all future CSAs would be deliberated at the June 2nd conference. *See* BellSouth Brief at p. 14. Our review of the Transcript for the May 12th conference did not reveal any clear statement by any Director that Public Chapter No. 41 and/or its impact on the TRA's procedures for filing and regulating CSAs would be discussed extensively at the June 2nd conference. From the collective statements of the Directors, perhaps one could infer or assume, as BellSouth apparently did, that this issue may be discussed on June 2nd during the TRA's consideration of the then-pending CSA dockets. Adequate public notice, however, does not require the public or interested parties to make such inferences and assumptions. Rather, it requires a special announcement that the agency intended to discuss extensively Public Chapter No. 41 and deliberate its impact on the timing of effectiveness for CSAs. Moreover, the written Agenda, which was issued

subsequent to any such announcement on May 12th, if made, did not list this item for the TRA's consideration at the June 2nd meeting.

The Consumer Advocate therefore submits that, even if at the June 2nd conference the TRA intended to decide the issue of whether CSAs filed in the future should be made effective upon filing, such decision would be void as this action was not properly noticed pursuant to the notice requirements of the Open Meetings Act.

2. If at the June 2nd conference the TRA intended to change its regulations for all CSAs filed in the future, such action is void because it does not comply with the rulemaking requirements set out in the UAPA.

As discussed in section II.A, *supra*, the TRA's rules require CSAs to be filed as tariffs and to be filed upon 30 days notice before they are to become effective. The proper way for the TRA to change these requirements, assuming that the agency ultimately finds it appropriate to do so, is to amend or repeal these rules in accordance with the UAPA.

The TRA is a "state board, commission, committee, department, officer, or any other unit of state government authorized or required by any statute or constitutional provision to make rules or to determine contested cases". Tenn. Code Ann. § 4-5-102(2). Thus, the TRA must follow the requirements of the UAPA when promulgating rules. *See Tennessee Cable Television Ass'n v. Tennessee Pub. Serv. Comm'n,* 844 S.W.2d 151, 163 (Tenn. Ct. App. 1992) (finding that the TRA's predecessor agency must substantially comply with the UAPA). The promulgation of rules "includes the amendment or repeal of a prior rule". Tenn. Code Ann. § 4-5-102(10). The agency's failure to follow the rulemaking process established in the UAPA shall render the proposed rule, amendment or repeal "void and of no effect and shall not be effective against any person or party nor shall it be

invoked by the agency for any purpose." Tenn. Code Ann. § 4-5-216. *See also Mandela v. Campbell,* 978 S.W.2d 531, 533 (Tenn. 1998) (stating that failure to promulgate rules as contemplated by the UAPA renders the rule void). The UAPA's requirements for a properly conducted rulemaking include: notice and publication of proposed rules, including amendment or repeal of a prior rule; opportunity for interested persons to comment; a rulemaking hearing; and approval of the proposed rule, amendment or repeal by the Office of the Attorney General. *See* Tenn. Code Ann. §§ 4-5-201, *et. seq.*

The notice requirements in a rulemaking are essential because "[d]ue process and sound governmental policy require giving the public an opportunity to participate in rulemaking proceedings that might affect private business interests or the personal liberties of private citizens." *U.S. Life Title Ins. Co. of New York v. Department of Commerce and Ins.*, 770 S.W.2d 537, 539 (Tenn. Ct. App. 1988). The notice requirements also ensure that interested parties are made aware of the substance of any proposed rule before it is adopted; enable interested parties to express their views concerning the proposed rule; and provide the agency with an opportunity to educate itself concerning the impact a proposed rule will have on affected parties. *See Id.* Thus, adequate notice "resolves many of the concerns over the fairness of administrative rulemaking." *Id.*

In this case, it is clear that the TRA could not have meant to adopt new rules or change existing ones by its action of June 2nd or, if it did, such action is void as it does not comply with the UAPA's requirements for promulgating rules. The Consumer Advocate and other interested parties were not given adequate notice that any rule change was being considered; we were not given an opportunity to comment on any proposed rule; and there has been no rulemaking hearing or submission of proposed rules to the Attorney General for approval. With no new regulation having

been properly adopted and no existing regulation having been properly amended or repealed, we have the same rules and regulations for administering CSAs today as those that were in effect prior to June 2nd.[3]

If BellSouth desires for the TRA to reconsider its rules for regulating CSAs, it may file a petition requesting the amendment or repeal of CSA regulations. *See* Tenn. Code Ann. § 4-5-201. BellSouth chose not to do so, but instead filed a tariff that essentially seeks to supplant the TRA's rules in favor of its own process. It would be incorrect for the TRA to consider granting such relief within the context of BellSouth's tariff proposal. *See Tennessee Cable Television Ass'n v. Tennessee Pub. Serv. Comm'n,* 844 S.W.2d 151, 162-163 (Tenn. Ct. App. 1992) (finding that rulemaking rather than adjudication is required to consider issues of administrative regulatory policy).

If BellSouth is contending that the TRA's rules never applied to CSAs in the first place or that enactment of Public Chapter No. 41 abrogates any such regulations, it may petition the TRA for a declaratory ruling. *See* Tenn. Code Ann. § 4-5-223. Again, BellSouth did not seek a declaratory ruling from the TRA, rather it merely filed its proposed tariff, presupposing that the TRA's tariffing and filing regulations either never applied to CSAs or no longer apply in light of recent legislative action.[4] While one might take the position that BellSouth has requested the TRA to consider its tariff filing as a petition for a declaratory ruling, the Consumer Advocate is of the opinion, based on the reasons discussed in section III., *infra*, that the instant docket is not a proper proceeding for issuing such a declaratory order.

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[3] As explained in the Consumer Advocate's June 30th brief, the enactment of Public Chapter No. 41 did not expressly or impliedly repeal or abrogate existing TRA rules for regulating CSAs.

[4] The Consumer Advocate finds it interesting that BellSouth filed a tariff which provides that tariffs are not required.

III. THE NATURE OF THE INSTANT PROCEEDING

The exact nature of the instant proceeding is confusing as the Consumer Advocate is uncertain as to the relief that BellSouth is now requesting. BellSouth's Brief has added the following language to the style of this case: "*Request for Declaratory Order Interpreting the Language of Public Chapter 41 of Tennessee 2003 Public Acts Regarding the Effective Date of Contract Service Arrangements Filed With the Authority*". BellSouth Brief at p. 1. This language is the source of confusion.

As stated above, the UAPA provides that a person may petition an agency for a declaratory ruling concerning a statute or rule within the jurisdiction of the agency. Specifically, Tenn. Code Ann. § 4-5-223 states:

> Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall: (1) Convene a contested case hearing pursuant to the provisions of this chapter and issue a declaratory order which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or (2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.

The Consumer Advocate understands that BellSouth filed a proposed tariff seeking to alter the TRA's requirements for handling CSAs; we understand that BellSouth was allowed to place the proposed tariff into effect; and we further understand that interested parties are being allowed to comment on the propriety of this tariff, notwithstanding its current effectiveness. Through this novel and innovative process, it appears that BellSouth's tariff filing is the proceeding that is properly before the agency at this time. On the issue of BellSouth's proposed tariff, the Consumer Advocate submits that, for the reasons stated in our pleadings and the pleadings of AT&T Communications

of the South Central States, LLC (hereinafter "AT&T"), the TRA should either deny BellSouth's tariff or open a contested case proceeding to further consider its merits.

With respect to any proceeding for a declaratory ruling on either Public Chapter No. 41 or the TRA's rules, the Consumer Advocate is not of the understanding that the TRA has opened such an action. If a contested case proceeding has been convened to issue a declaratory order, as the agency must do pursuant to Tenn. Code Ann. § 4-5-223, we missed the import of any such decision and, moreover, we would now request that the TRA appoint a hearing officer to establish a procedural schedule in this matter. If a contested case proceeding has not been convened, the Consumer Advocate submits that issuance of a declaratory order in this matter would not accord with the UAPA's procedures for issuing such orders.

IV. CONCLUSION

For the reasons stated herein and in our brief filed in this matter on June 30th, the Consumer Advocate submits the following conclusions and recommendations: Prior to the enactment of Public Chapter No. 41, the TRA's rules governed the tariffing and filing of CSAs; these rules require BellSouth to file CSAs as tariffs and to file CSAs at least 30 days before they are to become effective; enactment of Public Chapter No. 41 did not expressly or impliedly repeal or abrogate these regulations, nor has the TRA acted to change any of its rules and regulations; accordingly, the TRA's rules still govern the tariffing and filing of CSAs. BellSouth's proposed tariff requests regulatory forbearance of these regulations for its CSAs; however, the TRA should deny BellSouth's proposed tariff as it is improper for the TRA to grant such relief within the context of a tariff filing. If the TRA decides not to deny BellSouth's tariff filing at this juncture, it should convene a contested case

proceeding to evaluate the issues raised in this docket by the Consumer Advocate and AT&T.

BellSouth could file a petition requesting the TRA to change the agency's rules and/or it could request the TRA to issue a declaratory order interpreting the applicability of the agency's rules and/or Public Chapter No. 41. BellSouth has not properly requested any such relief. Nor can the instant proceeding be treated as a request for any such relief because, unless a rulemaking proceeding or contested case proceeding is convened[5], the instant proceeding does not comply with the procedures established in the UAPA for either promulgating rules or issuing declaratory orders.

Accordingly, it would be improper and legally incorrect for the TRA to grant the relief that BellSouth is requesting in the instant docket without any further agency action.

RESPECTFULLY SUBMITTED,

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Dated: July 7th, 2003

[5] If a contested case proceeding has been convened, the Consumer Advocate requests that the TRA appoint a hearing officer and establish a procedural schedule.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on parties below via U.S. Mail or facsimile on July 7, 2003.

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7 July, 2003

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