BellSouth Telecommunications, Inc.
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guy.hicks@bellsouth.com

Guy M. Hicks
General Counsel

615 214 6301
Fax 615 214 7406

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Sprint-United Tariff 2003-710 to Introduce Safe and Sound II Solution*
Docket No. 03-00442

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Comments in Support of Its Petition to Intervene and in Opposition to Position of Consumer Advocate Division*. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Sprint-United Tariff 2003-710 to Introduce Safe and Sound II Solution*

Docket No. 03-00442

COMMENTS OF BELLSOUTH TELECOMMUNICATIONS, INC. IN SUPPORT OF ITS PETITION TO INTERVENE AND IN OPPOSITION TO POSITION OF CONSUMER ADVOCATE DIVISION

In its *Petition to Intervene*, the Consumer Advocate and Protection Division ("CAD") invites the Tennessee Regulatory Authority (the "Authority") to mandate the resale of Customer Premises Equipment ("CPE") and inside wire maintenance plans despite the fact that neither are telecommunications services. The Authority should decline this invitation.

Incumbent Local Exchange Carriers ("ILECs") such as Sprint and BellSouth are obligated to resell telecommunications services. Because neither CPE nor inside wire maintenance plans are telecommunications services under the federal Telecommunications Act of 1996 (the "Act"), Sprint has no obligation to offer these services for resale, either on a stand-alone basis or as part of a bundle. Moreover, as a matter of regulatory policy, the Authority should encourage competitors to develop innovative offers, including bundles or packages of regulated and unregulated service. Such innovation would be stifled if the Authority were to impose additional resale obligations, thereby denying Tennessee customers innovative offerings that are the fruits of competition.

Sprint's Safe and Sound II Solution tariff (the "discounted bundle") offers consumers a telephone line and Caller ID at discounted rates when consumers purchase maintenance plans for CPE and inside wire. Under the discount bundle, a Tennessee consumer may purchase the entire package of services at a single price, $19.95 per month.

In support of its opposition to the discounted bundle, the CAD states that "Sprint United has set forth no statutory authority for exempting the subject service from the Act, nor has Sprint United offered any authority for the position that 'non-regulated' services are not subject to resale." The only other claim made by the CAD is that "Sprint United has not offered any state or federal authority for the position that bundling a product which is subject to resale with a product which is not subject to resale exempts the bundled product."[1]

As support for its position, the CAD cites only one statute, Section 251(c)(4) of the federal Act, which requires Incumbent Local Exchange Carriers to offer at "wholesale" rates any telecommunications services that the carrier provides at retail to subscribers who are not telecommunications carriers (emphasis added). This statute supports Sprint's position and undercuts the CAD's position. The term "telecommunications services" is defined by the Act, and CPE and inside wire maintenance plans clearly fall outside of this definition.

Section 153(46) of the federal Act defines "telecommunications service" as "the offering of telecommunications for a fee...." Section 153(43) states that "telecommunications" means the "transmission, between or among points specified by the user, of information of the user's choosing ...". Clearly, maintenance plans for CPE

[1] See paragraphs 5 and 6 of CAD's *Petition to Intervene*.

and inside wire do not involve the "transmission, between or among points specified by the user, of information of the user's choosing." Thus, the maintenance services fall outside the definition of telecommunications, and therefore outside the definition of telecommunications services that are subject to resale. It is clear, therefore, that it is the CAD, not Sprint, that failed to set forth statutory authority in support of its position. Nor is Sprint asking the Authority to "exempt" a service from the Act, as the CAD claims. The federal Act's definition of telecommunications does not include CPE or inside wire maintenance plans by any stretch. No "exemption" is sought or needed by Sprint.

As Sprint correctly points out in its Comments, "the use of CPE can no more be considered a transmission of information than the use of a microwave oven could be considered a distribution of electricity."[2] In fact, the FCC has long since deregulated CPE and inside wire because such services are provided by multiple vendors and providers. Indeed, equipment vendors and electrical contractors that are not regulated by either the FCC or the Authority provide maintenance services for CPE and inside wire. As long ago as 1980, the FCC concluded that there should be no requirement for CPE to be offered as a tariffed communications service.[3] In the 1980 *Order*, the FCC effectively held that CPE is not subject to Title II regulation at all. More recent orders from the FCC are fully consistent with this finding.

In a 2001 order, the FCC eliminated the prohibition against bundling of CPE and enhanced services with telecommunications services. In that order, the FCC consistently treats CPE and enhanced services as separate from telecommunications services. For example, when analyzing how to assess Universal Service Fund

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[2] See Sprint's *Comments* at p. 2.
[3] *See* FCC's Final Decision in Docket No. 20828, in an *Order* released April 7, 1980, at ¶ 35,

allocations on a bundled package of services, the FCC noted with approval that "carriers report revenues from telecommunications services and revenues from non-telecommunications offerings (including CPE and enhanced services revenues) in separate sections of the Commission's revenue worksheet ...."[4]

FCC decisions regarding inside wire also demonstrate that it is not a telecommunications service for the same reason CPE is not a telecommunications service. In 1986, the FCC stated that its legal authority for its decision to detariff inside wiring was the same as that relied upon to detariff CPE.[5]

It is illogical to argue, as does the CAD, that a service which is not a telecommunications service and which is not available for resale when sold on a standalone basis is magically transformed into a telecommunications service that must be available for resale when it is included as part of a bundle Such an argument also ignores binding FCC precedent.

In its 2001 *Bundling Report and Order* in CC Docket 96-91 and 98-183, the FCC clarified that facilities-based carriers may offer bundled packages of information and telecommunications services at a single price, subject only to existing safeguards. These existing safeguards include the resale of the telecommunications services that are included in the bundle and the Computer III requirements that ILECs unbundle the underlying transmission facilities used by its enhanced services. The FCC declined to establish any new safeguards with respect to bundles comprised of information and telecommunications services, and FCC certainly did not require that such a bundle be

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[4] *See* FCC's *Bundling Report and Order*, released March 30, 2001 in CC Docket Nos. 96-91 and 98-183 at, for example, ¶¶ 6, 10 and 48.

[5] *See* FCC *Second Report and Order*, CC Docket No. 75-109, released February 24, 1986 in *The Matter of Detariffing the Installation and Maintenance of Inside Wiring*, fn. 3.

made available for resale simply because the bundle includes a telecommunications service. On the contrary, the FCC recognized the stand-alone nature of bundled service offerings and declined to require that such bundles be broken into discreet price parts. Indeed, the FCC issued safe harbor rules for reporting telecommunications services revenue for bundled service offerings for universal service purposes to account for the fact that bundles have both telecommunications and information services.

Sprint's Safe and Sound II bundle provides residential customers multiple services that are discounted at a single price. With this integrated bundle, consumers in Tennessee have another choice in the marketplace. The consumer can weigh the benefits of purchasing the discounted bundled offer rather than incurring separate transaction costs for assembling the individual services in the bundle.[6] Sprint's bundle will provide consumers with another choice of integrated service offerings, and Sprint should be able to offer this bundle in competition against other providers without being subject to new resale obligations. As explained above, Section 251(c)(4) of the federal Act limits an ILEC's resale obligations to "telecommunications services" provided to retail subscribers. There is no statutory resale requirement that would obligate Sprint to either make the integrated bundle available for resale or break up its bundle into individual component services in order to make the telecommunications services included therein available for resale.

A carrier seeking to replicate Sprint's bundle can purchase the stand-alone telecommunications services at the applicable resale discount and can provide its own CPE and inside wire maintenance services or obtain such services from numerous

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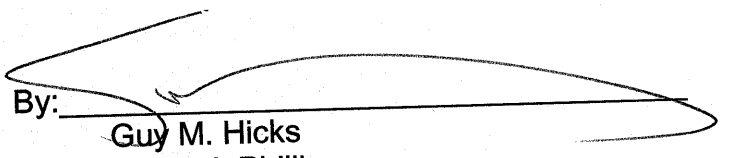
[6] *See* FCC's *Bundling Report and Order*, released March 30, 2001, in FCC Docket 01-98, CC Docket Nos. 96-91, 98-183, ¶¶ 6 and 10 (March 30, 2001).

other maintenance providers. Sprint's position on resale complies fully with federal law and Authority policy should promote, rather than discourage the development of innovative bundles and packages for Tennessee customers. Adopting the CAD's position would not only be contrary to federal law, it would discourage the development of such bundles and packages. The FCC has already considered issues relating to the bundling of telecommunications products with unregulated CPE or enhanced services. The CAD's petition wrongly encourages the TRA to ignore FCC precedent and chart an inconsistent course toward increased regulation and dampening the development of innovative and creative offerings that benefit Tennessee customers.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

R. Douglas Lackey
675 W. Peachtree St., NE, Suite 4300
Atlanta, GA 30375

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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James Wright, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587
james.b.wright@mail.sprint.com

[ ] Hand
[ ] Mail
[ ] Facsimile
[ ] Overnight
[X] Electronic

Vance Broemel, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, Tennessee 37202
vance.broemel@state.tn.us