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October 27, 2003

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 *Reply Brief Regarding Resale Questions*. Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

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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

REPLY BRIEF OF BELLSOUTH TELECOMMUNICATIONS, INC. REGARDING RESALE QUESTIONS

BellSouth Telecommunications, Inc. ("BellSouth") files this Reply Brief in response to the filing by the Consumer Advocate Division ("CAD").

To clarify BellSouth's position, it is important to recognize that BellSouth is not, as the CAD suggests, taking the position that telecommunications services are "not available for resale" when they are bundled. Rather, BellSouth's position is that such services are still available for resale at a tariffed price minus the wholesale discount.

The statute does ***not***, however, mandate that the telecommunications services included in the bundle should be made available at a discounted price – a price presumably determined by tearing apart the bundle and looking at each element standing alone as if the other elements of the bundle did not exist. This is because such a ***hypothetical*** discounted price ***is not a price at which the ILEC makes such services available to its own retail end-users***. Accordingly, this ***hypothetical*** price cannot form the starting point for calculating the ***actual*** resale discount. Making the telecommunications services available for resale at this

hypothetical "bundled" discounted price minus the additional wholesale discount would be the equivalent of providing resellers a service at a price that does not relate to the prices for which those services are ***actually*** offered at retail to the public.

The CAD's idea of resale in this situation is based upon a ***pretend*** price, and none of the CAD's argument provides legal authority for ***pretending*** that price exists in the ***real*** marketplace.

When the end-user is required to make other purchases of unregulated or nontelecommunications services in order to obtain the discount on the bundle, it is not fair or accurate to pretend that BellSouth offers the telecommunications services at a bundled discount price on a stand-alone basis. In fact, BellSouth does not offer such prices for the stand-alone telecommunications service, or any subset of the services or products in the bundle. When BellSouth makes those individual services or products (or any subset of them) available for resale, the calculation of the resale discount must start with the ***real*** stand-alone price for such telecommunications services. This is completely consistent with the FCC authority (quoted by the CAD in its brief) noting that:

> Section 251(c)(4) provides that the incumbent LEC must offer for resale at wholesale rates any telecommunication service ***that the carrier provides at retail*** to noncarrier subscribers. (Local Competition Order at ¶ 948, emphasis added.)

No one, neither Sprint nor BellSouth, is suggesting that the Authority should accept a resale theory that would allow ILECs to "bundle away" their resale obligations. Both Sprint and BellSouth agree that telecommunications services

must be provided to resellers at the wholesale discount. The CAD, however, without statutory or regulatory authority, takes resale a step further in the context of bundled offerings. The CAD asks the Authority to use a hypothetical/pretend price, as the base price before subtracting the wholesale discount, even though that theoretical price is not available at retail to the ILEC's end-users. Rather, end-users must pay the discounted price ***and*** also purchase other items. This additional consideration required from the end-user would not be reflected in the CAD's version of the resale rule. This is why the CAD's position inappropriately broadens the resale requirements. Consequently, Sprint and BellSouth are not seeking to "side step" their resale obligations. Rather, the CAD is seeking to inappropriately broaden those obligations.

The sole authority relied upon by the CAD with respect to bundled offers are two FCC Orders. Those Orders, however, do not address hybrid bundles that group telecommunication services with different items that are not telecommunications services. Rather, the discussion in those orders is in the context of a bundle comprised only of other telecommunications services. *See Local Competition Order* at ¶ 877. There is no reference in either Order to the situation in which the telecommunications service is bundled with a non-telecommunications service or bundled with a service offered by another provider. In fact, in the sentences of the *Local Competition Order* immediately following those quoted by the CAD, the FCC restates the obligation to offer for resale "any telecommunications service" provided at retail to end users and then states there is no exception if "those services" can be duplicated or combined from other services.

"Those services" clearly refers to "telecommunications services", making clear that the FCC was addressing bundles comprised of telecommunications services. There is no suggestion in the *Order* of hybrid bundles. Likewise, nothing in the *Arkansas Pre-emption Order*, which relies on ¶ 877 of the *Local Competition Order*, was breaking new ground. Rather, like the *Local Competition Order*, the *Arkansas Order* contains no language referencing hybrid bundles. For this reason, the CAD's reliance on these Orders is misplaced. They simply are not addressed to the issue of "hybrid" bundles.

Even the CAD admits that it is unclear how it would apply the resale obligation in the context of bundled offer. (CAD Brief at 10-11.) In the absence of any authority, the CAD proposed various "options", ***including*** requiring the resale of the services and products contained in the bundle ***that are not telecommunications services***.[1] This "option" is wholly without legal support.

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[1] On page 11 of the CAD's brief, the CAD states:

> There may be some situations where the entire bundle of services should be deemed telecommunications services for purposes of resale. Such situations could arise, for instance, where the bundled service package is composed predominately of telecommunications services or where the telecommunications services portion of the bundled offering is either indiscrete or, for whatever reason, inseparable from other bundled services.

On page 2 of the very same brief at foot note 1, however, the CAD complains that:

> BellSouth's comments that the Consumer Advocate invites the TRA to mandate the resale of services that are not telecommunications services (*See Comments of BellSouth Telecommunications, Inc. in Support of Its Petition to Intervene and in Opposition to Position of Consumer Advocate Division* (Sept. 15, 2003)), grossly mischaracterize the Consumer Advocate's position in this case and should be disregarded.

Far from "grossly mischaracterizing" the CAD's position, BellSouth's briefs reflect precisely what the CAD states on Page 11, namely that under its theory, the CAD would support resale of nontelecommunications services in some instances. These two statements cannot be squared. On page 11, the CAD wants the TRA to require resale of non-telecommunications services, while on page 2, the CAD takes offense at BellSouth for saying that the CAD wants the TRA to require resale of non-telecommunications services.

The fact that the CAD has been able to offer no specific manner in which to calculate the wholesale discount using its theory on resale is illuminating. The reason it is difficult to articulate the manner in which this theory would be applied is that the CAD seeks to apply it in a fashion not intended by the statute and not covered by the plain language of the statute. The CAD's "different approaches" or "options" are not founded in Section 251 of the Act. Rather, these are ideas that would constitute a new, Tennessee-specific resale mandate that would, no doubt, take substantial time and procedure to develop, resulting in substantial delays in bringing these offers to customers in Tennessee.

In the absence of any legal authority supporting the CAD's position on the incumbent LEC resale of hybrid bundles of telecommunications services with other services, it would be bad policy to impose Tennessee-specific resale obligations based on the fiction that LECs are offering discrete services to end-users at a price those ILECs are simply not offering in reality. If the Authority adopted such a policy, it would create a significant disincentive to the offer of bundled "hybrid" promotions in Tennessee. Taking ILECs out of the competition in this area would dampen the dynamic competition in the area of bundles. Tennessee customers would miss out on the offers developed through competition in which every player plays – just as is h appening in other states.[2]

For the reasons articulated above and in BellSouth's earlier filing, and for the reasons articulated by Sprint in its filing, BellSouth urges the Authority to approve

[2] The CAD has not cited any authority from any other state commission requiring resale in the manner urged by the CAD.

Sprint's tariff and to apply the resale obligations in the fashion articulated by BellSouth and Sprint.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

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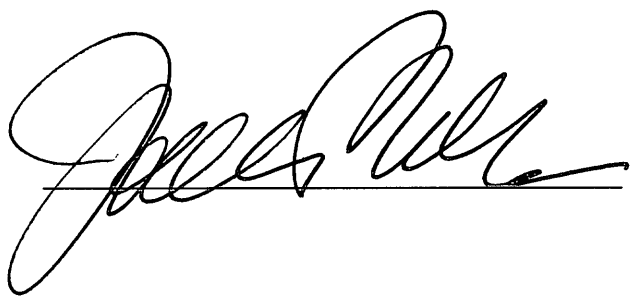

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