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

joelle phillips@bellsouth com

Joelle J Phillips
Attorney

615 214 6311
Fax 615 214 7406

January 25, 2005

VIA HAND DELIVERY

Hon. Pat Miller, 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 Miller:

Enclosed are the original and fourteen copies of BellSouth's *Motion to Clarify Order Denying Tariff as Filed*.

Copies of the enclosed are being provided to counsel of record.

Cordially,

Joelle Phillips

JJP:ch

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

MOTION TO CLARIFY ORDER DENYING TARIFF AS FILED

BellSouth Telecommunications, Inc. ("BellSouth") files this *Motion to Clarify Order Denying*[1] *Tariff as Filed* (the "*Order*") dated January 10, 2005, and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

The *Order* issued January 10 fails to accurately reflect the resolution of the above-referenced docket. Specifically, on Monday January 5, 2004, Director Kyle noted in her comments in Docket 03-00512, her support for BellSouth's motion, filed in this docket, to reconsider the Panel's decision on the Sprint *Safe and Sound II Solution* tariff (the "*Safe and Sound tariff*"). Specifically, Director Kyle noted at that Conference:

> Previously the Authority ruled that the telecommunications services contained in the Safe and Sound bundled offering proposed by Sprint must be made available for resale pursuant to the Federal Telecommunications Act. In that same docket we have received a motion to reconsider, and I wanted to let the other Directors know that when we get to that docket I plan to grant the motion for reconsideration and hear further discussion on the issues raised in that docket.

[1] As pointed out in Sprint's *Motion for Clarification*, the Panel did not vote to "deny" the tariff, but rather the Panel decided to provide additional time for the parties to discuss a potential resolution of the issues raised by the interventions. Before that additional time expired, the tariff was withdrawn.

My reason for granting the motion for reconsideration is that our decision in the Sprint Safe and Sound docket has been discussed in several other dockets that involve different promotions. Many of those different promotions involve different kinds of services, and I'm particularly interested in the way our eventual ruling on the Safe and Sound bundle could impact other promotions that include services like Internet access and other information-type services. At the heart of this ruling is the finding that incumbent carriers could potentially avoid their obligation to resale service offering established by the telecommunications act by simple combination of telecommunications and other nontelecommunications services which have come to be known as hybrid bundles.

The Federal Communications Commission guided state commissions in the local competition order so that we could work through these resale obligations, and let me quote what the FCC bundled report and order of March 2001 said, and I quote what the FCC has stated.

We also clarify that under our rules all facilities-based carriers may offer bundled packages of enhanced services and basic telecommunications at a single price subject to existing safeguards. Our decision furthers the three goals that we identified in the further notice of proposed rulemaking in this docket. It will benefit consumers by enabling them to take advantage of innovative and attractive packages of services and equipment, foster increased competition in the markets for CPE-enhanced and telecommunications services and allow us to repeal regulatory requirements that no longer make sense in light of current technological market and legal conditions. Moreover, the actions we make in this order further congress's directive in the Telecommunication Act of 1996 that we repeal or modify any regulation we determine to be no longer in the public interest.

And that was of March of 2001. Therefore, the FCC recognized that allowing all carriers to bundle products and services is generally procompetitive and beneficial to consumers, that bundling encourages competition by giving carriers flexibility to both differentiate themselves from competitors and to target segments of the consumer market with product offerings designed to meet the needs of individual customers and that there is a need for regulatory requirements to adjust to an ever-changing marketplace.

In addition, the FCC's first order -- first report and order paragraph 877 states, On the other hand, Section 251(c)4 does not impose on incumbent LECs the obligation to disaggregate a

retail service into more discrete retail services. The 1996 Act merely requires that any retail services offered to customers be made available for resale.

I believe that for any customer the bundled service offering at a single price is considered like a single retail product, especially since the individual parts cannot be made available to customers at the wholesale discounted rate. I interpreted this paragraph as a support to the ILECs' position that they are not required to break up a retail service for the purpose of resale as long as the underlying telecommunications services are available individually at wholesale rates through the general tariff, and here that is true.

Evidence from the telecommunications marketplace showed that CLECs continue to package popular vertical services and toll services together in different ways that allow both residential and business customers to obtain a bundle of services at a lower overall price. In response to the competitive pressures, ILEC also attempted to lower the prices of some individual services offered through bundled services to better compete with offerings competing providers. Therefore, I believe that ILECs from cannot be precluded from bundling just because bundling might deter CLECs' local market entry as some argue. The Federal Telecommunications Act itself anticipated bundling when applicable conditions are met. The role of those participating in implementing the Act is to decide whether those conditions have been met.

A concern that I have with this offering is that the termination charges apply to the nontariffed portion of the bundle. All of the parties in this room are quite familiar with the time and resources this agency has devoted to the study of termination charges. While I'm reluctant to not explicitly address my concerns, nevertheless I am of the mind that such provisions lie outside my purview, my jurisdiction. However, I believe that it is prudent for the agency to continue to monitor the application of termination charges when appropriate.

I feel compelled to provide the concrete benefits provided to consumers via the discounts of this offering by approving this tariff. Thus, I move first this tariff be approved. I believe that there are provisions which will provide safeguards for the public interest and prevent any ILEC from developing anticompetitive behavior detrimental to the continued development of a competitive marketplace in the telecommunications industry.

Thank you, Chairman Tate, for allowing me to put my comments on record, especially in light of my position in the

> Safe and Sound previously. Therefore, I would ask for a second on my motion.

Transcript at 11-16. After discussion, the motion received a second.

Sprint withdrew its tariff on December 23, 2003, and did not choose to resubmit its tariff, even after Director Kyle made the comments referenced above and moved to approve the BellSouth Integrated Solutions tariff. As a result, the Sprint *Safe and Sound II Solution* docket was mooted, and the panel never acted on BellSouth's motion to reconsider.

BellSouth urges the Authority to clarify the January 10, 2005 *Order* in order to avoid confusion regarding the precedent for bundled offerings involving both regulated and unregulated services. Specifically, as ordered by the TRA in Dockets 03-00554 and 03-00624, resale requirements for bundled offerings were satisfied when the individual regulated components were made available for resale at the tariff rate less the wholesale discount. The Authority found that it was not necessary for resale to be based upon a prorated portion of the bundled discounted, when such prorated prices were not available to actual customers in the market. This ruling was consistent with FCC teachings on bundling, and is the most recent pronouncement of the TRA regarding the proper treatment of bundled offerings.

For the foregoing reasons, BellSouth respectfully requests that the Authority issue an order clarifying the January 10, 2005 *Order*, noting Director Kyle's comments quoted above and that this docket was mooted by the withdrawal of the tariff before the Authority was able to consider the motion to reconsider filed in this docket.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: _____

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

CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2005, a copy of the foregoing document was served on the parties of record, via the method indicated:

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[ ] Mail
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[ ] Overnight
[X] Electronic

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

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

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Street, #1600
Nashville, TN 37219-8062
hwalker@boultcummings.com