

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 10, 2006

IN RE:

**BELLSOUTH TARIFF TO INTRODUCE
TRANSIT TRAFFIC SERVICE, TARIFF NO. 04-01259**

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**DOCKET NO.
04-00380**

ORDER ALLOWING TARIFF TO GO INTO EFFECT

This matter came before Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on February 28, 2005 for consideration of the *Tariff Filing to Introduce Transit Traffic Service* filed by BellSouth Telecommunications, Inc. ("BellSouth") on October 15, 2004.

BACKGROUND

BellSouth's Tariff Filings

On October 15, 2004, BellSouth filed Tariff No 04-01259 (the "Tariff") to introduce transit traffic service, to become effective November 5, 2004. Transit traffic represents local traffic that originates on one carrier's network and is delivered by BellSouth to a different carrier's network for termination. BellSouth proposes to assess charges for such traffic transiting its network, unless a carrier has an interconnection agreement addressing transit traffic. In that situation, the terms of the interconnection agreement will apply in lieu of BellSouth's Tariff. If the interconnection agreement is limited to certain types of traffic or carriers, the Tariff will continue to apply to any traffic or carrier types not addressed in the agreement

The Tariff defines local traffic for wireline-to-wireline calls (calls between competing local exchange carriers (“CLECs”), between incumbent local exchange carriers (“ILECs”) or between CLECs and ILECs) as intraLATA calls transiting its network for which BellSouth does not collect toll or access charges. For calls involving wireless carriers, such as commercial mobile radio service (“CMRS”) providers, local traffic is defined as any call within the Major Trading Area (MTA), subject to BellSouth’s LATA restrictions.

On October 19, 2004, BellSouth revised its Tariff to correct typographical errors, and on October 28, 2004 BellSouth sent a letter requesting the effective date of the Tariff be extended to November 9, 2004. BellSouth voluntarily extended the effective date of the Tariff several times thereafter to allow itself additional time to respond to the Authority’s data requests and to negotiate with the companies that sought interventions and requested suspension of the Tariff.

On February 8, 2005, BellSouth submitted a revised tariff (“revised Tariff”) with an effective date of March 2, 2005. The revised Tariff, according to BellSouth, attempts to address the concerns expressed by the companies seeking intervention in this docket. BellSouth added language to clarify that the revised Tariff will only apply to carriers that do not have interconnection agreements with BellSouth addressing transit traffic service and, if the agreement is expired, that are not engaged in ongoing negotiation or arbitration for a new interconnection agreement. The revision also includes additional detail on how such traffic should be measured and provides a transition period for the new rates. BellSouth proposes a \$0.003 per minute charge for transit traffic through December 31, 2005 and a \$0.006 per minute rate thereafter.

Petitions to Intervene

Sprint

On October 27, 2004 Sprint Communications Company, L.P. and Sprint Spectrum, L.P. (together, “Sprint”) filed a complaint requesting that the Tariff be suspended and that a contested case proceeding be convened. Sprint also argued that the Authority should not allow BellSouth’s

Tariff go into effect while the issue of whether transit traffic should be priced at TELRIC¹ remains pending in TRA Docket Nos 03-00585² and 00-00523.³

Sprint amended its petition on November 12, 2004, stating that BellSouth's proposed Tariff, as filed, would require the application of transit traffic tariff rates when parties are unable to negotiate interconnection agreements. Sprint contended that the Tariff had the potential of increasing the existing rates paid by carriers for transit traffic, which are TELRIC-based, to tariff rates which BellSouth admits are "market based." Moreover, Sprint contended that BellSouth's obligation to provide transit for traffic is an interconnection service governed by Section 251 of the federal Telecommunications Act of 1996 and, accordingly, BellSouth cannot impose non-TELRIC rates. Sprint further asserted that transit, as a Section 251 interconnection service, is not properly included in a tariff.

Joint Petitioners

On October 29, 2004, a Joint Petition was filed by AT&T Communications of the South Central States, LLC, MCI Metro Access Transmission Services, LLC, MCI WorldCom Communications, Inc., NuVox Communications, Inc., US LEC of Tennessee, Inc., XO Tennessee, Inc., Xspedius Communications, LLC and Southeastern Competitive Carriers Association ("Joint Petitioners") requesting intervention, suspension of the Tariff and the convening of a contested case. The Joint Petitioners asserted that Section 251 encompasses transit traffic thus requiring TELRIC-based rates pursuant to Section 252. Furthermore, they alleged that BellSouth had made no effort to demonstrate that rates are cost-based or otherwise consistent with the pricing standards set forth in Section 251. The Joint Petitioners also argued that because the transit rate of \$0.0025 per minute is in effect in a number of interconnection agreements and BellSouth's Statement of Generally Accepted Terms ("SGAT"), BellSouth's proposed tariff rate of twice that amount does not comply

¹ TELRIC is an acronym for Total Element Long Run Incremental Cost

² *In re Petition for Arbitration of Cellco Partnership d/b/a Verizon Wireless*, Docket No 03-00585

³ *In re Universal Service for Rural Areas – The Generic Docket*, Docket No 00-00523

with the standards of Section 252. The Joint Petitioners also contended the higher tariff rate is unjust and unreasonable and that BellSouth will seek to impose the transit traffic tariff rates when current interconnection agreements expire. The Joint Petitioners alleged that transit service is a monopoly service because BellSouth is the only available carrier in most circumstances and, accordingly, the TRA should be cautious to insure that such a monopoly rate is just and reasonable and non-discriminatory in order for competition to develop as required under Tenn Code Ann. § 65-4-123 (2004).

Rural Coalition

On November 1, 2004 the Rural Coalition of Small Local Exchange Carriers and Cooperatives (“Rural Coalition”)⁴ filed a petition to intervene, requesting the TRA suspend the proposed Tariff and convene a contested case proceeding. According to the Rural Coalition, BellSouth’s Tariff seeks to impose requirements for a local exchange carrier (“LEC”) to deliver traffic to a point of interconnection beyond its network and impose rates upon the LEC for such traffic. The Rural Coalition also stated that BellSouth previously had never attempted to impose such obligations on the Rural Coalition members. Finally, the Rural Coalition asserted that the issue of who is responsible for transit traffic and associated fees is subject to decision in TRA Docket No. 03-00585 and that BellSouth’s Tariff is an attempt to circumvent the TRA’s pending decisions in that docket.

Citizens

On January 4, 2005, Citizens Telecommunications Company of Tennessee, LLC d/b/a Frontier Communications of Tennessee (“Citizens”) filed a petition to intervene. In objecting to the

⁴ The Rural Coalition members are Ardmore Telephone Company, Inc , Ben Lomand Rural Telephone Cooperative, Inc , Bledsoe Telephone Cooperative, CenturyTel of Adamsville, Inc , CenturyTel of Claiborne, Inc , CenturyTel of Ooltewah-Collegedale, Inc , Concord Telephone Exchange, Inc , Crockett Telephone Company, Inc , Dekalb Telephone Cooperative, Inc , Highland Telephone Cooperative, Inc , Humphreys County Telephone Company, Loretto Telephone Company, Inc., Millington Telephone Company, North Central Telephone Cooperative, Inc , Peoples Telephone Company, Tellico Telephone Company, Inc , Tennessee Telephone Company, Twin Lakes Telephone Cooperative Corporation, United Telephone Company, West Tennessee Telephone Company, Inc and Yorkville Telephone Cooperative

Tariff, Citizens contended that in instances when a CLEC or CMRS provider indirectly interconnects with a rural LEC, the rural LEC should not be required to pay the CLEC or CMRS provider's agent cost. As a comparison, Citizens explained that if a CLEC or CMRS provider interconnected directly with a rural LEC, the costs beyond the rural LEC's network would be the CLEC or CMRS provider's expense and the costs on the rural LEC's side of the point of interconnection would be the rural LEC's expense. Further, Citizens contended that the only compensation that the CLEC and CMRS providers should receive for terminating traffic of rural LECs is reciprocal compensation.

Citizens also argued that the obligation to provide transit traffic over a local carrier's network is pursuant to 47 U.S.C. § 251 and should not be a tariffed item. Citizens contended that pursuant to the federal Telecommunications Act of 1996, rural LECs should only pay reciprocal compensation for traffic between rural LECs and CLEC or CMRS providers and that those rates must be established by agreement or arbitration, not by way of a BellSouth Tariff.

BellSouth's Response to Petitions to Intervene

On January 10, 2005, BellSouth filed its response to the petitions to intervene. BellSouth stated that the Tariff does not affect any existing agreement relating to transit traffic. BellSouth expressed optimism that it could negotiate agreed revisions to resolve the concerns raised by the CLECs and Sprint and by Citizens.

BellSouth contended that the Rural Coalition's petition raised no legitimate issue of law or fact relating to BellSouth's Tariff. BellSouth stated that it is entitled to receive payment when its network is used to deliver traffic of another carrier and parties should not be able to avoid payment simply by refusing to enter into contracts with BellSouth.

BellSouth argued that the Rural Coalition failed to satisfy the requirements of Tenn. Code Ann. § 65-5-101(c)(3) (2004) for suspension of a tariff by not asserting violation of a specific law. BellSouth also argued that the Rural Coalition raised no issue of concern or specific allegation of harm to warrant suspension of the Tariff under the statutory requirements.

STATUTORY STANDARD FOR SUSPENSION OF A TARIFF OR CONVENING A CONTESTED CASE

In order to prevail in a request to suspend a tariff, the complaining party must demonstrate a sufficient showing, or otherwise meet the statutory requirements, to warrant suspension of BellSouth's Tariff. Those statutory requirements are set forth in Tenn Code Ann § 65-5-101(c) (2004). That subsection provides that tariffs filed by ILECs shall become effective twenty-one (21) days after filing subject to certain requirements. Tenn. Code Ann § 65-5-101(c)(3) (2004) sets forth the statutory criteria for suspension of tariffs and the convening of a contested case proceeding for tariffs as follows.

(3) Tariffs may be suspended pending such hearing on a showing by a complaining party that

(i) The complaining party has filed a complaint before the authority alleging with particularity that the tariff violates a specific law,

(ii) The complaining party would be injured as a result of the tariff and has specifically alleged how it would be so injured; and

(iii)(A) The complaining party has a substantial likelihood of prevailing on the merits of its complaint,

(B) The authority may suspend a tariff pending a hearing, on its own motion, upon finding such suspension to be in the public interest. The standard established herein for suspension of tariffs shall apply at all times including the twenty-one (21) or one (1) day period between filing and effectiveness;

(C) The standard established herein for suspension of tariffs shall not be applicable in any way to the determination by the authority of whether to convene a contested case to consider revocation of a tariff. The authority may choose to convene a contested case, or decline to convene a contested case, in its own discretion, to promote the public interest. The standard established in this subsection (c) for suspension of tariffs shall not be applicable in any way to any decision by the authority regarding revocation of a tariff.⁵

⁵ Tenn Code Ann § 65-5-101(c)(3) (2004)

FEBRUARY 28, 2005 AUTHORITY CONFERENCE

The panel heard comments from BellSouth and the companies seeking suspension of the Tariff during the February 28, 2005 Authority Conference. In advance of the Conference, on February 25, 2005, Sprint filed a letter withdrawing its opposition to BellSouth's revised Tariff but expressing its desire to remain informed of the docket. On February 28, 2005, Citizens filed a letter informing the TRA that it no longer objected to the revised Tariff and that BellSouth had addressed Citizens' concerns through the filing of the revised Tariff. Like Sprint, Citizens stated that it was remaining in the docket to monitor and to comment on future changes or filings.

BellSouth argued at the February 28, 2005 Conference that the intervention requests failed to meet the statutory requirements for suspending the effectiveness of the Tariff. Further, BellSouth explained that the Tariff operates to resolve the issue of arrangements for transit between the CMRS providers and the Rural Coalition, an issue central to the arbitration proceeding in TRA Docket No. 03-00585. BellSouth also addressed certain concerns of CLECs by stating that the Tariff would not govern where there is an interconnection agreement that covers transit or an agreement that covers transit and has expired but remains in effect during renegotiation.

FINDINGS AND CONCLUSIONS

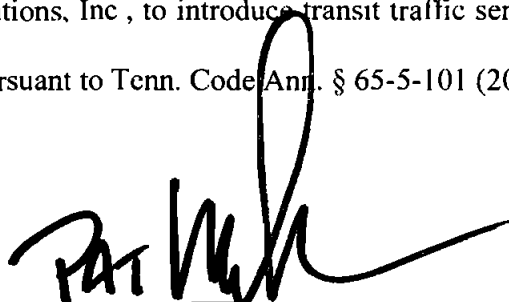
Upon review of the record and after hearing the parties' comments, the panel found that none of the companies requesting suspension of the Tariff have demonstrated a sufficient showing, or otherwise met the aforementioned statutory requirements, to warrant suspension of BellSouth's Tariff. Specifically the companies failed to cite a specific law of which the Tariff is in violation, stating only that the rate increase is not in the public interest. Nevertheless, nothing in the record at that time indicated that the Tariff would be contrary to the public interest. The companies failed to show the financial impact and resulting harm the proposed Tariff would have on their operations and failed to provide information sufficient to warrant suspension of the Tariff.

Tenn. Code Ann. § 65-5-101(c) (2004) provides that the Authority may suspend a tariff upon finding that such suspension would be in the public interest. Presently, BellSouth is not compensated for traffic transiting its network when a carrier does not have an interconnection agreement with BellSouth. Where interconnection agreements exist, the terms relating to transit traffic apply. Therefore, the tariff rate for transit traffic only applies in instances when a carrier has not entered into an agreement that addresses transit traffic service and, if the agreement has expired, is not engaged in ongoing negotiation or arbitration for a new interconnection agreement.

After hearing oral argument at the February 28, 2005 Authority Conference, the panel voted unanimously to allow BellSouth's revised tariff to become effective pursuant to Tenn. Code Ann § 65-5-101(c) (2004). The panel also reminded the parties that, pursuant to Tenn. Code Ann § 65-5-101(c) (2004), any party may subsequently file a complaint seeking to have the Tariff revoked.

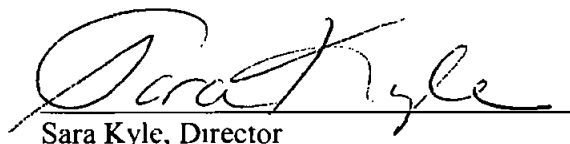
IT IS THEREFORE ORDERED THAT:

The Tariff filing by BellSouth Telecommunications, Inc., to introduce transit traffic services (Tariff No. 2004-01259) is allowed to go into effect pursuant to Tenn. Code Ann. § 65-5-101 (2004).



Pat Miller, Chairman

Deborah Taylor Tate, Director⁶



Sara Kyle, Director

⁶ Director Tate voted in agreement with the other directors but resigned her position as director before the issuance of this order