

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: UNITED TELEPHONE-SOUTHEAST
INC. d/b/a EMBARQ CORPORATION
TARIFF FILING TO INCREASE RATES IN
CONJUNCTION WITH THE APPROVED
2007 ANNUAL PRICE CAP FILING**

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DOCKET NO. 07-00269

**CONSUMER ADVOCATE'S OBJECTIONS AND RESPONSES TO EMBARQ'S
SECOND SET OF DISCOVERY REQUESTS**

Robert E. Cooper, Jr., the Attorney General & Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Consumer Advocate"), pursuant to Tenn. Code Ann. § 65-4-118 and the Tennessee Rules of Civil Procedure, respectfully submits these objections and responses to the first discovery request of United Telephone-Southeast, Inc. d/b/a Embarq Corporation ("Embarq" or "Company").

GENERAL OBJECTIONS

1. The Consumer Advocate objects to the definitions and instructions contained in the company's interrogatories to the extent that the definitions and instructions attempt to impose on the Consumer Advocate a burden or obligation greater than that required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.
2. The Consumer Advocate objects to the interrogatories to the extent they call for information and the production of documents which are protected from disclosure by the

attorney-client privilege, the attorney work product doctrine or any other applicable privilege or protection. The Consumer Advocate objects to the data requests to the extent that the Company is attempting to impose on the Consumer Advocate obligations with regard to identification of privileged documents beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

3. The Consumer Advocate objects to the Company's interrogatories to the extent they seek information relating to matters not at issue in this litigation or to the extent they are not reasonably calculated to lead to the discovery of admissible evidence. By providing information in response to these requests, the Consumer Advocate does not concede that such information is relevant, material or admissible in evidence. The Consumer Advocate reserves all rights to object to the use of such information as evidence.

4. The Consumer Advocate objects to the Company's interrogatories to the extent that the Company is attempting to impose on the Consumer Advocate obligations to supplement its responses beyond those required by the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

5. The Consumer Advocate objects to the Company's interrogatories to the extent that the Company is attempting to require the Consumer Advocate to provide information and produce documents beyond those in its possession, custody or control as that phrase is used in the *Tennessee Rules of Civil Procedure* and applicable statutes and regulations governing contested case hearings.

6. The Consumer Advocate objects to the Company's data requests to the extent they seek information and documents that are readily available through public sources or are in the Company's own possession, custody or control. It is unduly burdensome and oppressive to

require the Consumer Advocate to respond or produce documents that are equally available to the Company.

7. The Consumer Advocate objects to the production of any document prepared by it subsequent to the filing of this litigation or contested case.

8. The Consumer Advocate's objections and responses to these requests are based on information now known to it. The Consumer Advocate reserves the right to amend, modify or supplement its objections and responses if it learns of new information.

9. The Consumer Advocate's responses to these requests are made without waiving or intending to waive the right to object to the use of any information provided in response to any subsequent proceeding or trial of this or any other action. The Consumer Advocate's responses to these requests are also not a waiver of any of the foregoing objections or any objections it has made or may make with respect to any similar, related, or future data request, and the Consumer Advocate specifically reserves the right to interpose any objection to further requests notwithstanding any response or lack of objection made in this response.

10. The Consumer Advocate will supplement its responses in accordance with the requirements of state law.

11. The Consumer Advocate expressly incorporates these general objections into its responses set forth below.

Subject to and without waiving any objections stated above the Consumer Advocate responds to the specific request as follows:

RESPONSES TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please identify each person whom you expect to call as an expert witness at the hearing on the merits in this docket, and for each such expert witness his or her qualifications.

RESPONSE: On July 1, 2008, Terry Buckner and Mike Chrysler submitted pre-filed testimony in this docket. Mr. Buckner and Mr. Chrysler will be available at the hearing in this matter for testimony. The Consumer Advocate has no plans at present to call any other expert witnesses. Mr. Chrysler's qualifications are attached in appendix "A" to his direct testimony. Mr. Buckner's qualifications are attached to this discovery response at Attachment A.

2. Please produce copies of all documents, summaries, charts, trade articles, journals, treatises, publications, workpapers, file notes, chart notes, tests, test results, interview notes, and consultation notes provided to, reviewed by, utilized by, relied upon, created by, or produced by any proposed expert witness in evaluating, reaching conclusions or formulating an opinion in this matter.

RESPONSE: The pre-filed direct testimony includes and/or references all information relied upon and or created by the Consumer Advocate in this matter. The Consumer Advocate reserves the right to supplement should any new information arise. In addition, the Consumer Advocate reviewed the directory assistance tariffs of Embarq in this matter and the discovery responses on file in this docket. Further, U.S. Census data from 2000 indicating computer and internet access in Tennessee was examined but not retained as more recent and up to date information became available.

3. Please produce copies of all documents referred to or relied upon in responding to these

discovery requests.

RESPONSE: See response to Request #2.

4. Please produce copies of all hearing exhibits that you plan to introduce, use, or reference at the hearing on the merits in this docket.

RESPONSE: At this time, the Consumer Advocate has no hearing exhibits prepared. The Consumer Advocate anticipates exhibits would be based upon information in the record in this docket. The Consumer Advocate will supplement this response as appropriate.

5. Please produce copies of all documents -- including, without limitation, workpapers, spreadsheets, summaries, charts, notes, exhibits, articles, journals, treatises, periodicals, publications, reports, records, statements, Internet web pages, or financial information -- that you contend support the factual assertions, conclusions, or opinions of any of your witnesses in this matter.

RESPONSE: See Response to Request #2.

6. Please produce copies of all documents -- including, without limitation, workpapers, spreadsheets, summaries, charts, notes, exhibits, articles, journals, treatises, periodicals, publications, reports, records, statements, Internet web pages, or financial information -- relied upon by any of your witnesses in evaluating, reaching conclusions, or formulating an opinion in this matter.

RESPONSE: See Response to Request #2.

7. Please produce copies of all documents -- including, without limitation, workpapers, spreadsheets, summaries, charts, notes, and exhibits -- created by or for or prepared by or for any of your witnesses in evaluating, reaching conclusions, or formulating an opinion in this matter.

RESPONSE: See Response to Request #2.

8. Please identify all information, documents and things filed in the present docket record, including all responses to discovery of the parties and data request of the Tennessee Regulatory Staff, which the Consumer Advocate produced in this docket and does not agree to stipulate to the authenticity of such information, documents and things in this proceeding. For each separate piece of information, documents and things which Consumer Advocate produced in this docket and Consumer Advocate contends is not admissible as evidence, describe in specific detail any objection(s) Consumer Advocate claims as to admissibility into the evidentiary record in this docket.

RESPONSE: At this time, the Consumer Advocate does not have a response.

9. Please provide all Excel (or other data files) containing the information provided in response to these requested items.

RESPONSE: Not applicable.

10. Please identify all alternatives known to and/or documented by the Consumer Advocate that are available to Embark's residential customers for access to free directory assistance service within the company's Tennessee service area.

RESPONSE: The Consumer Advocate is unaware of any other additional examples of

alternatives to directory assistance that the company identified in Mr. Hunter's direct testimony. The Consumer Advocate will supplement this response if new alternatives are identified.

11. Provide any information about billing or service complaints concerning Embarq's directory assistance service the Consumer Advocate is aware of, including any complaints to the Tennessee Regulatory Authority, Better Business Bureau or other consumer complaint gathering agency or organization.

RESPONSE: Objection. This request seeks information protected by the Work Product Doctrine. Notwithstanding the objection, the Consumer Advocate does not have any responsive information as to consumer complaints related to directory assistance.

On June 13, 2008, the Consumer Advocate formally requested from the TRA all consumer complaints pertaining to Embarq that were on file with the TRA since 2006. Due to the voluminous number of complaints on file and in an effort to conserve the TRA's resources and time, the Consumer Advocate inspected the requested consumer complaints on site at the agency rather than request a copy of each individual consumer complaint. The inspection was conducted by Ryan McGehee.

12. Provide copies of all documents in possession of the Consumer Advocate that document, pertain or indicate the scope of, estimate and/or factual documentation of internet access and service penetration within Embarq's Tennessee Service area.

RESPONSE: See exhibits of Mr. Chrysler's direct testimony filed on July 1, 2008. Specifically, reference exhibits MDC 1 and MDC 3. These documents were prepared for public consumption by Connected Tennessee, a non-profit organization. They are also available online at Connected

Tennessee's website. Further, U.S. Census data from 2000 indicating computer and internet access in Tennessee was examined but not retained as more recent information became available. If new information arises, the Consumer Advocate will supplement this response.

13. At pages 2-3 of Michael D. Chrysler's Direct Testimony, Mr. Chrysler stated he had doubts about the accuracy of the 1-800-Free-411 service and explained that a "random sampling reveals that this service could not provide listing information for some listings that are already in Embarq's published directories.'" Please provide: (a) all notes concerning the name and number of the directory assistance inquiries made in the random sampling; (b) the number of inquiries made; (c) identify by whom and when the inquiries were made; and (d) whether the inquiries were made using the service's website or 1-800 number.

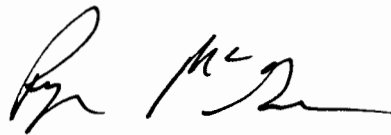
RESPONSE: The Consumer Advocate objects as this request as it calls for information protected by the Work Product Doctrine. Without waiving the objection, the Consumer Advocate responds as follows: The Consumer Advocate did not conduct a formal or scientific survey or formally document the random sampling. The sampling was performed by a paralegal, Jeremy Harwell, during the week of June 23-27, 2008. Mr. Harwell requested listings from 1-800-Free-411 for forty Embarq customers in groups of ten randomly selected from Embarq's phone books. The results and each listing group selected were not formally documented. Of the forty listings requested, approximately seven to eight Embarq customers were not listed. For example, of the first ten listings that show both first and last names under the letter "A" in the Mountain City phone book provided by Embarq during the first round of discovery, at least four of the phone book listings could not be provided by the 1-800-Free-411 phone number. It is believed that one of the Embarq customers in this group was not listed due to the customer's

request of 1-800-Free-411 not to disclose the customer's phone number. Further, Mr. Chrysler's personal experience outside of his employment in using the 1-800-Free-411 phone has also informed his opinion and doubts about the accuracy or missing listing information from 1-800-Free-411 phone number. The Consumer Advocate did not sample or test the 1-800-Free-411 website.

14. For each witness the Consumer Advocate intends to call as an expert witness at the hearing on the merits in this docket, please describe that person's training and experience working in the telecommunications area. Particularly describe any training, experience and employment duties that pertains to telecommunications. List the dates of all training, experience and employment duties. Particularly list any recent training, experience or employment duties that pertain to the current competitive telecommunications environment and alternative regulatory approaches.

RESPONSE: The Consumer Advocate objects to the broadness of the request. However, responsive information can be found in the Consumer Advocate's Response to Request #2.

Respectfully submitted this 18 day of July, 2008.



RYAN L. McGEHEE, B.P.R. # 025559
Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
(615) 532-5512 (phone)
(615) 532-2910 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Complaint and Petition to Intervene was served on the party below via facsimile, U.S. Mail, hand delivery, commercial delivery, or e-mail, on the 18 day of July, 2008.

Edward Phillips, Esq.
Embarq Corporation
1411 Capital Boulevard
Wake Forest, NC 27587-5900



Ryan L. McGehee
Assistant Attorney General

Attachment A

Terry Buckner, Regulatory Analyst

B. S. in Business Administration, University of Tennessee, Knoxville

CPA, Member of the AICPA and the Tennessee Society of CPAs

Twenty-five years of experience with the Public Utility industry:

1980 - 1988 TDS Telecom - Region Accounting Manager

1989 - 1994 Tennessee Public Service Commission ("TPSC") - Regulatory Analyst

1995 - 2001 Office of the Attorney General for the State of Tennessee - Consumer Advocate and Protection Division - Regulatory Analyst

2001- 2004 Comptroller's Office for the State of Tennessee - Public Utility Audit - Assistant Director

2004 - Present Office of the Attorney General for the State of Tennessee - Consumer Advocate and Protection Division - Regulatory Analyst

Oral and written testimony in numerous rate proceedings before the TPSC and the Tennessee Regulatory Authority. Including the following dockets and/or companies

Dockets

TRA #07-00224 Chattanooga Gas Company

Direct Testimony: <http://www.state.tn.us/tra/dockets/0700224.htm>

TRA #07-00105 Atmos Energy Corporation

Direct Testimony: <http://www.state.tn.us/tra/orders/2007/0700105cg.pdf>

TRA # 06-00290 Tennessee American Water Company

Direct Testimony: <http://www2.state.tn.us/tra/dockets/0600290.htm>

TRA # 06-00175 Chattanooga Gas Company

Direct Testimony: <http://www2.state.tn.us/tra/dockets/0600175.htm>

TRA # 05-00258 Atmos Energy Corporation

Direct Testimony: <http://www2.state.tn.us/tra/dockets/0500258.htm>

TRA #04-00288 Tennessee American Water Company

Direct Testimony: <http://www.state.tn.us/tra/orders/2004/0400288bm.pdf>

TRA#03-00391 BellSouth

Rebuttal: <http://www.state.tn.us/tra/orders/2003/0300391ci.pdf>

Rebuttal Exhibits: <http://www.state.tn.us/tra/orders/2003/0300391ch.pdf>

TRA #02-00383 Chattanooga Gas Company

<http://www.state.tn.us/tra/orders/2002/0200383m.pdf>

TRA #01-00451 United Telephone Company

<http://www.state.tn.us/tra/orders/2001/0100451w.pdf>

TRA #00-00523 Rural Universal Service

<http://www.state.tn.us/tra/orders/2000/000052316.pdf>

TRA #99-00210 BellSouth Telecommunications, Inc.

TRA #99-00244 BellSouth Telecommunications, Inc.

TRA #98-00559 BellSouth Telecommunications, Inc.

TRA #99-00995 TEC Companies

<http://www.state.tn.us/tra/orders/1999/990099522.pdf>

TRA #98-00626 UTSE

TRA #97-00982 Chattanooga Gas Company

TRA #96-00977 Nashville Gas Company

TPSC #95-02258 United Cities Gas Company

TPSC #95-02116 Chattanooga Gas Company

TPSC #94-02876 BellSouth Telecommunications

PSC #92-13527 South Central Bell - Earnings Investigation for the years 1993-
1995 (Copy of Testimony Not Available)

Docket N/A GTE - Rate Filing
(Copy of Testimony Not Available)

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EXEC. DIR. OFF.

Before the

TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

In Re:

South Central Bell Telephone Company

Docket 94-02876

Direct Testimony

of

Terry Buckner

November 18, 1994

1 Q. Please state your name for the record.

2 A. My name is R. Terry Buckner.

3 Q. By whom are you employed and what is your position?

4 A. I am employed by the Consumer Advocate Division (CA) in the State
5 of Tennessee Attorney General's Office as a Senior Regulatory
6 Analyst.

7 Q. How long have you been employed in the utility industry?

8 A. Approximately seventeen years. Before my employment with the
9 Attorney General, I was employed with the Tennessee Public Service
10 Commission (Commission) as a financial analyst for approximately
11 six years. Prior to my employment with the Commission, I was
12 employed by Telephone and Data Systems (TDS) for eight years and
13 the First Utility District of Knox County for three years.

14 Q. What is your educational background and what degrees do you
15 hold?

16 A. I have a Bachelors degree in Business Administration from the
17 University of Tennessee, Knoxville with a major in Accounting. I am
18 also a Tennessee Certified Public Accountant and a member of the
19 American Institute of Certified Public Accountants.

20 Q. Would you briefly describe your responsibilities as a Senior
21 Regulatory Analyst since your employment with the CA?

22 A. My responsibilities include evaluating financial data, submitting data

1 requests to Companies, making recommendations to the Director of
2 the CA Division and the Consumer Advocate, and preparing
3 testimony and exhibits.

4 **Q. What is the purpose of your testimony?**

5 A. The purpose of my testimony is to present information to the
6 Commission as to the reasonableness of the proposed tariff filing
7 #94-223 by South Central Bell (SCB) in Docket #94-02876 regarding
8 the establishment of regulations, rates, and charges for the provision
9 of Directory Assistance (DA) services in Tennessee.

10 **Q. Would you please identify the general issues regarding Docket**
11 **#94-02876?**

12 A. The Consumer Advocate has filed a motion with the Commission to
13 dismiss SCB's request to impose a charge for DA in Tennessee. In
14 the filed motion, it is the Consumer Advocate's contention that SCB's
15 filing was in fact improperly filed according to Commission rules and
16 that the filing is inappropriate and untimely.

17 Additionally, the CA received responses from SCB to our data
18 request dated November 1, 1994 on November 14, 1994. The CA
19 staff is presently reviewing SCB's responses many of which were
20 inadequate or were not responded to due to SCB's objections. On
21 November 17, 1994, the CA spoke with counsel for SCB and SCB
22 agreed to provide additional information which may offset other

1 issues.

2 Q. Would you please identify the specific issues regarding Docket
3 #94-02876?

4 The specific issues within the filing are as follows:

5 (1) Whether the filing is valid and appropriate under rule 1220-4-2-
6 .55. In exchange for the opportunity to make excessive profits by
7 cutting costs and inefficiencies, SCB agreed that it would not initiate
8 any requests to adjust its earnings except in accordance with rule
9 1220-4-2-.55. SCB is not to initiate any requests and the
10 Commission is not to entertain any unless and until the situation
11 comes within the provision of the rule.

12 The rule requires that SCB not initiate any adjustment unless its
13 earnings are 60 basis points below its prescribed rate of return. The
14 60 basis points translates into 6/10 of 1% or .60%. SCB's prescribed
15 rate of return is 11.25%. Using simple math to subtract .60% from
16 11.25%, one arrives at 10.65% as the point at which SCB can
17 legitimately request an adjustment to its earnings. The Commission
18 Staff knows SCB's most recent report of its earnings in relationship
19 to its prescribed rate of return through the submission of the
20 Commission monthly report 3.01. The Commission 3.01 report for
21 August 1994 shows that SCB is earning 10.79% for the last twelve
22 months to date. Therefore it is clear on its face to SCB and the

1 Commission Staff that there are no grounds to consider this earnings
2 adjustment. The CA believes that this proceeding is illegal,
3 illegitimate and very irregular. It is contrary to both the spirit and the
4 letter of rule 1220-4-2-.55. In addition, it is contrary to what
5 prompted that rule which was to encourage SCB to reduce its
6 expenses and to improve its efficiency. SCB does neither with this
7 particular earnings increase, so therefore it goes even against the
8 policy behind the rule. Certainly, SCB is not offering to reduce any
9 costs or improve its efficiencies by this particular rate increase or rate
10 proposal. SCB has not shown that it is threatened or that the
11 consumer's interests are jeopardized by denying this earnings
12 adjustment. Simply put, SCB is proposing to reduce service that it is
13 presently providing to its customers.

14 The CA would first say that this matter should be dismissed outright
15 and that there was no need for this hearing in the first place if SCB
16 complied with the rule. The Commission should dismiss this
17 proceeding in its entirety and deny SCB any adjustment to its
18 earnings;

19 (2) The determination of the 50% destimulation factor used by SCB
20 to calculate revenue is not factually supported in their filing and calls
21 into question the projected earnings increase identified by SCB. In
22 addition, the imposition of the directory assistance charge will likely

1 increase revenues in the future from the Company's electronic white
2 page offering. The Company has not included the additional revenue
3 from this service in its projection;

4 (3) A local call allowance of 5 residential and 3 business per month
5 for DA calls but no long distance DA allowance. This is backwards,
6 logically there should be a greater DA allowance for long distance
7 calls since a directory for the distant calling area is not normally
8 available to the caller;

9 (4) While SCB has not provided the average monthly amount of new
10 number listings by month, it only provided the activity for October
11 1994 during which 67,889 in new number listings were issued. If this
12 is representative of a normal month, an average of approximately
13 600,000 numbers are not available during the directory publishing
14 cycle. This recognizes that there is a sixty to ninety day lag in the
15 time a number list is compiled and the date when a directory is
16 issued for a particular year. The directory does not include the new
17 number listings during the lag time or for future new number listings
18 until a new directory is published the following year. As a result,
19 there is a significant number of listings which are not available in the
20 directories and the ratepayer has no option but to use DA;

21 (5) SCB is attempting to take advantage of or circumventing the
22 proposed local competition rule currently pending. Under the

1 proposed rule, SCB would be required to reduce access charges half
2 way to the interstate level without offsetting rate increases. By using
3 the DA charge to more than offset the access reductions, SCB avoids
4 the earnings reductions required in the proposed local competition
5 rule. This filing is also an attempt by SCB to stifle potential
6 competition at the expense of the captive monopoly ratepayers by
7 increasing the charges for monopoly directory assistance charges and
8 reducing rates for the potentially competitive access charges;

9 (6) There is a general vagueness in the determination of who the
10 "handicapped or disabled" are and who makes that determination to
11 qualify for an exemption from this tariff filing;

12 (7) Additionally, SCB's recent tariff filing revision filed
13 November 14, 1994, includes a fifty call allowance for "qualified
14 handicapped or disabled" employees of businesses. The Company
15 has provided nothing to show an allowance is adequate. Obviously,
16 the imposition of such a charge on business will impact a business'
17 decision when considering the employment of a disabled person who
18 must obtain telephone numbers in the performance of their jobs. The
19 allowance of approximately 2 calls per work day may not be
20 sufficient especially when the position calls for extensive use of the
21 telephone;

22 (8) There are illiteracy concerns for those citizens who cannot read

1 and would be disadvantaged by this tariff filing. While we recognize
2 that it is not the duty of the telephone company to teach reading, it
3 must be recognized that a large number of Tennesseans are
4 functionally illiterate. Based on data obtained from the Tennessee
5 Department of Education, approximately 1 in 6 Tennesseans is
6 functionally illiterate. This indicates that approximately 816,000 are
7 functionally illiterate based upon the U.S. Census Bureau estimate of
8 the population of Tennessee;

9 (9) SCB's rationale for determining the proposed reductions in access
10 and toll rates, and the amounts per service to be reduced by SCB is
11 questionable as to its propriety. It may be more appropriate to reduce
12 Caller ID or reduce touch-tone calling rates. SCB has not shown any
13 linkage between its revenues for long distance and directory
14 assistance rates;

15 (10) There is no assurance that 100% of the proposed access
16 reductions by SCB will be flowed through by the Inter-exchange
17 Carriers (IXCs) to the ratepayer. There are no new reductions in tariff
18 filings pending for any long distance carrier. In other words, the
19 earnings of the IXCs would increase if the access reductions are not
20 flowed through dollar for dollar by reduced interlata long distance
21 rates;

22 (11) Uncertainty exists as to whether the filing would jeopardize the

1 accuracy of the annual access reduction ordered by the Commission
2 (Megacom Order U-87-7492). The filing made by the Company to
3 reduce access rates in accordance with order U-87-7492 is under the
4 assumption that the proposed tariff is already in effect. This
5 assumption impacts the magnitude of the access reductions;

6 (12) Privacy concerns also exist in that SCB will release name and
7 address to a DA caller seeking identification for a phone number.
8 Presently, SCB's DA will not provide the name and address when the
9 caller has only the telephone number. Under the proposed tariff a
10 caller will be able to obtain such information. In addition, this
11 proposal raises safety issues as well as privacy concerns;

12 (13) SCB should realize a dramatic increase in revenues from
13 unpublished number listings if the tariff is approved. This increase is
14 not recognized anywhere in the filing. Additionally, the tariff filing
15 is a disincentive to timely updates of directories. Also, SCB has not
16 quantified the expected revenue increase and earnings from this new
17 service;

18 (14) SCB has failed to provide evidence to demonstrate the
19 reasonableness and fairness of this tariff filing when it is presently
20 recovering the cost of DA through other revenue streams. This
21 Commission has historically denied SCB's filings for a per call charge
22 for DA, as recent as September 1993 in tariff filing 92-190. SCB has

1 provided NO evidence since September 1993 to change the
2 Commission's current policy DA service in Tennessee.

3 **Q. Are there other concerns with SCB's tariff filing?**

4 A. Yes, the CA requests that public hearings be held across SCB's
5 Tennessee service area to allow SCB customers the opportunity to
6 express an opinion as to whether customers should be charged on a
7 per DA call basis or that DA be recovered on a business as usual
8 basis. The hearings should be scheduled to allow a representative
9 number of customers of all types, areas and means to express their
10 views on the proposed DA filing. Additionally, the public should be
11 adequately notified of their opportunity and the potential change in
12 the ratepayers bill. After public opinion is expressed, the
13 Commission can more adequately determine the reasonableness of
14 the current DA tariff filing.

15 SCB has not stated how the safety, efficiency, or adequacy of DA
16 relates to those rates. Moreover, the CA is concerned that the DA
17 rate request is priced to operate contrary to a free market system by
18 discouraging calls rather than establishing a low rate and encouraging
19 calls.

20 It must also be recognized that while this tariff was made by SCB, it
21 will impact all Tennessee ratepayers. If approved, it will be a
22 precedent for filings by other carriers such as AT&T.

1 Q. Does this conclude your testimony?

2 A. Not necessarily. As I indicated earlier SCB was not fully responsive
3 to our data request. We may have additional concerns upon receipt of
4 that information.

CERTIFICATE OF SERVICE

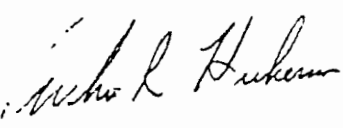
I, L. Vincent Williams, hereby certify that a true and correct copy of the foregoing Testimony of Terry Buckner has been served on the following parties of record by depositing a copy of the same in the United States mail, postage pre-paid, addressed to them, in accordance with the following list, this 18th day of November, 1994:

Charles Howorth, Esq.
South Central Bell Telephone Company
333 Commerce St.
Suite 2101
Nashville, TN 37201-3300

John M. Farris, Esq.
50 North Front St.
Suite 1400
Memphis, TN 38103

Roger Briney, Esq.
AT&T
1200 Peachtree St., NE
Room 4068
Atlanta, GA 30309

Val Sanford, Esq.
230 4th Ave., North
3rd FLP.O. Box 198888
Nashville, TN 37219-8888

for 

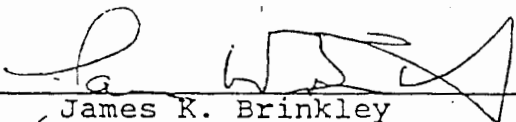
L. Vincent Williams

STATE OF GEORGIA

COUNTY OF FULTON

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared James K. Brinkley who, being by me first duly sworn deposed and said that:

He is appearing as a witness on behalf of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company, before the Tennessee Public Service Commission in Docket No. 94-02876, Application of South Central Bell to Establish Regulation, Rates and Charges for the Provision of Directory Assistance Service in Tennessee, and if present before the Commission and duly sworn, his testimony would be set forth in the annexed Testimony consisting of 8 pages and 0 exhibits.



James K. Brinkley

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 11th DAY OF NOVEMBER, 1994.



Notary Public

Notary Public, Gwinnett County, Georgia
My Commission Expires March 8, 1997

DIRECT TESTIMONY OF
JAMES K. BRINKLEY
ON BEHALF OF BELL SOUTH TELECOMMUNICATIONS, INC.,
D/B/A
SOUTH CENTRAL BELL TELEPHONE COMPANY

NOVEMBER 18, 1994

Q. PLEASE STATE YOUR NAME, EMPLOYER, POSITION AND BUSINESS ADDRESS.

A. My name is James K. Brinkley. I am employed by BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company in Tennessee (hereinafter referred to as "South Central Bell" or "the Company"). My present position is Director - Pricing & Economics in the Regulatory and External Affairs department. My business address is 675 West Peachtree Street NE, Atlanta, Georgia 30375.

Q. PLEASE GIVE A BRIEF DESCRIPTION OF YOUR BACKGROUND AND EXPERIENCE.

A. I received a Bachelor of Science degree from Clemson University in 1969 and a Master of Engineering degree from the University of South Carolina in 1973. After graduating from Clemson University, I served approximately two years active duty in the U.S. Army and am presently a Battalion Commander in the U.S. Army Reserves. I began my telephone

career with Southern Bell in 1973 in Columbia, South Carolina as an Outside Plant Engineer. Since then, I have served in various positions in the Engineering, Support Services, Marketing, and Pricing organizations in both South Carolina and Georgia. Currently, I have responsibilities for tariff and rate development for switched access, operator services, and billing and collections services for the nine states in the BellSouth region.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A. On October 6, 1994, South Central Bell filed a revenue neutral tariff package to implement a charge for Directory Assistance (hereinafter referred to as "DA"). My testimony will describe the elements of the Company's filing package, why it is appropriate to charge for DA, and the benefits to consumers that will occur with approval of this package by the Tennessee Public Service Commission.

Q. DESCRIBE THE TARIFF PACKAGE FILED BY SOUTH CENTRAL BELL.

A. There are three parts to this tariff filing:

1. The implementation of a charge for DA service,
2. A reduction of Message Telecommunications Service ("MTS") charges, and
3. A reduction of intrastate Switched Access charges.

The revenue generated by a DA charge will be passed on to customers through lower long distance rates and access charges. Specifically, the DA charge proposal will generate approximately ^{22.9}~~\$19.9~~ million in revenue and cost savings annually. The MTS charge proposal will reduce revenues by approximately ^{7.7}~~\$6.6~~ million annually. The Switched Access charge proposal will reduce revenues by approximately ^{15.2}~~\$13.3~~ million annually.

It should be noted that the impact of the Switched Access charge reduction on Tennessee consumers will depend on the pricing actions of the interexchange carriers ("IXCs").

Q. DID SOUTH CENTRAL BELL INITIATE THIS PROCEEDING TO ADJUST ITS EARNINGS?

A. No. As I have explained above, if this filing is approved, it will be revenue neutral and thus will have no effect on the company's earnings.

Q. WHAT WILL SOUTH CENTRAL BELL CHARGE FOR DIRECTORY ASSISTANCE?

A. The proposed tariff provides that all residence customers will have an allowance of five free DA calls per line per month and business customers will receive a three call

allowance per line or equivalent per month. A charge of \$.25 per call will be applied on DA calls exceeding the allowance. There will be no charge for DA calls made from hospitals, nursing homes, public and semi-public telephone service locations and customer-provided public telephones. Customers with disabilities that prevent their use of the printed directory will be exempt from the charges on their residential line and will receive a fifty call allowance on their business line.

South Central Bell's proposal protects those customers who use DA service only when necessary by moving some of the responsibility for paying for the service to those who use the service frequently. While the frequent DA user will begin paying for this service, all customers will have access to lower toll rates.

Q. WHY IS IT APPROPRIATE TO CHARGE FOR DIRECTORY ASSISTANCE?

A. In an increasingly competitive telecommunications environment, prices for individual services should reflect their underlying cost. Currently, competitive applications of Time Warner AxS of Tennessee, L.P., AVR, L.P., d/b/a Hyperion of Tennessee; Access Transmission Service, Inc. ("ATS"), Teleport Denver Inc., and Metropolitan Fiber Systems of Tennessee, Inc. ("MFS") are pending before the Commission,

and a rulemaking is underway to open the local exchange to competition. Tariffs such as this one which move rates toward reflecting their underlying cost must be implemented in order to transition customers in Tennessee to a rate structure which will be sustainable in this increasingly competitive environment.

Today, because there is no charge for DA service in Tennessee, over \$27 million of this service cost is recovered each year through prices customers pay for other services. Almost every customer, therefore, pays for DA service whether they use the service or not. Tennessee is the only state in the nation where there is no charge for customers to use intrastate DA service. Present usage studies show that eighty percent of residential customers make five or fewer DA calls, and ninety-five percent of business customers make three or fewer DA calls. From our studies, the majority of Tennessee's customers will not even be affected by the DA charge proposed in the tariff.

Q. IF THIS TARIFF IS APPROVED, WILL SOUTH CENTRAL BELL LAY OFF OPERATORS WHEN THERE IS LESS DEMAND FOR THE SERVICE?

A. The Company does not expect any layoffs as a result of implementing a directory assistance charge and has made this commitment to the Communications Workers of America. Any

necessary reduction in force will be handled by attrition and reassignment.

Q. DESCRIBE THE TOLL CHARGE REDUCTION PROPOSED IN THE TARIFF.

A. There are two parts to the toll reduction proposed in the tariff. First, the tariff proposes to lower the rate on all mileage bands 31 miles and over. This reduction equates to \$2,770,292 annually. The second part of this tariff filing is a volume discount which equates to a ^{4,724,000}~~\$3,803,000~~ revenue reduction.

The volume discount will apply to both residential and business customers. For each billing period, customers billed up to \$10 in intraLATA toll will receive a one percent discount, for ^{5 1/2}~~\$10.01~~ to \$25 - a ~~five~~ percent discount, and for more than \$25 - an ^{11%}~~eight~~ percent discount. The discounts will be applied on an account basis for calls carried by South Central Bell and are in addition to rate period discounts. The discounts will not apply to Optional Calling Plan calls, local exchange service charges, DA charges, operator-handled surcharges, or RegionServ calls. This volume discount will provide a benefit to those customers who rely on long distance service.

Q. DESCRIBE THE SWITCHED ACCESS CHARGE REDUCTION PROPOSED IN THE

TARIFF.

- A. The annual projected gross revenue impact for Switched Access services is a reduction of ^{17,895,470}~~\$15,738,867~~ to South Central Bell. The projected net revenue impact, assuming flow through of the access rate decreases by the IXCs, is a reduction of ^{15,223,778}~~\$13,300,000~~. This reduction equals ^{more than}~~approximately~~ half of the amount necessary to attain parity with current interstate Switched Access rates in Tennessee. Additionally, this reduction equates to approximately a ^{five}~~twenty-two~~ percent change in the composite Switched Access rate.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

- A. South Central Bell's tariff filing will result in a much greater benefit to customers than does free DA. Present usage studies show that eighty percent of residential customers make five or fewer DA calls, and ninety-five percent of business customers make three or fewer DA calls. From our studies, the majority of Tennessee's customers will not even be affected by the DA charge proposed in the tariff.

There are many customer benefits to be gained from implementation of South Central Bell's proposed tariff:

* responsibility for paying for DA service shifted to the

individuals and businesses who use it frequently (i.e., move prices toward reflecting their underlying cost);

- * lower MTS rates for the longer mileage bands;
- * a volume discount for customers who use South Central Bell's intralata long distance service and, by choice or necessity, use long distance services frequently; and
- * a reduction in the difference between intrastate and interstate access rates in Tennessee by approximately half.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

STATE OF TENNESSEE

Office of the Attorney General



PAUL G. SUMMERS
ATTORNEY GENERAL AND REPORTER

ANDY D. BENNETT
CHIEF DEPUTY ATTORNEY GENERAL

LUCY HONEY HAYNES
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April 30, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: United Telephone-Southeast, Inc. Tariff to Reflect Proposed Changes Under Price
Regulation Plan
Docket No. 98-00626

Dear Mr. Waddell:

I have enclosed an original and thirteen copies of Direct Testimony of Consumer Advocate Division witness Robert T. Buckner, Senior Regulatory Analyst in the above referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

L. Vincent Williams
Consumer Advocate

c: Counsel of record

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: UNITED TELEPHONE-SOUTHEAST, INC. TARIFF TO REFLECT
PROPOSED CHANGES UNDER PRICE REGULATION PLAN
DOCKET NO. 98-00626

DIRECT TESTIMONY
of
ROBERT T. BUCKNER

April 30, 1999

1 Q. Please state your name for the record.

2 A. My name is Robert T. Buckner ("Terry").

3

4 Q. By whom are you employed and what is your position?

5 A. I am employed by the Consumer Advocate Division ("CA") in
6 the State of Tennessee Attorney General's Office as a Senior Regula-
7 tory Analyst.

8

9 Q. How long have you been employed in the utility industry?

10 A. Approximately twenty years. Before my employment with the
11 Attorney General, I was employed with the Tennessee Public Service
12 Commission ("Commission") as a financial analyst for approximately
13 six years. Prior to my employment with the Commission, I was
14 employed by Telephone and Data Systems ("TDS") for eight years and
15 the First Utility District of Knox County for three years.

16

17 Q. What is your educational background and what degrees do you
18 hold?

19 A. I have a Bachelors degree in Business Administration from the
20 University of Tennessee, Knoxville with a major in Accounting. I am
21 also a Tennessee Certified Public Accountant and a member of the
22 American Institute of Certified Public Accountants. Additional

1 education background with respect to my qualifications is provided in
2 Exhibit No. 1 (Attachment A).
3

4 **Q. Would you briefly describe your responsibilities as a Regulatory**
5 **Analyst since your employment with the CA?**

6 A. I prepared testimony and exhibits as an employee with the
7 Commission before becoming a member of the CA. My
8 responsibilities have not changed significantly since becoming
9 employed with the CA.
10

11 **Q. What is the purpose of your testimony before the Tennessee**
12 **Regulatory Authority ("TRA")?**

13 A. The purpose of my testimony is to present the CA's
14 recommendations on the calculated amount to be used in changing
15 United Telephone-Southeast ("UTSE") Tariff under their Price
16 Regulation Plan in Tennessee Regulatory Authority ("TRA") Docket
17 #98-00626. Also, my testimony will address the methodology set
18 forth in the stipulation in TRA Docket #96-01423 and its concurrence
19 with Tenn. Code Ann. § 65-5-209.
20
21
22

1 Q. By what amount should UTSE be allowed to change their Tariff
2 under the Price Regulation Plan?

3 A. It is the CA's position that UTSE should reduce their Non-Basic
4 Rates by an annual amount of \$351,935 in contrast to UTSE's
5 proposal to increase rates \$2,072,472 for a total difference of
6 \$2,457,406. See Attachment B, Line 10 of Exhibit No. 1. This
7 amount is consistent with the CA's Statement of Issues filed with the
8 TRA on December 1, 1998.

9
10 Q. Does this reduction include the imputation of Yellow Page
11 revenues?

12 A. No. UTSE has refused to identify the Yellow Page revenue that
13 would have been imputed had the procedures that were in place in
14 1995 were being followed today. Consequently, the impact of this
15 alleged deficiency cannot be determined at this time.

16
17 Q. Does the methodology as set forth in the stipulation in TRA
18 Docket #96-01423 conflict with the requirements of Tenn. Code
19 Ann. § 65-5-209?

20 A. No. The methodology does not conflict. Tenn. Code Ann. §
21 65-5-209 establishes the limit in the amount of rates increases that may
22 occur in any one year:

1 § 65-5-209(e) A price regulation plan shall
2 maintain affordable basic and non-basic rates by
3 permitting a maximum annual adjustment that
4 is capped at the lesser of one half (1/2) the
5 percentage change in inflation for the United
6 States using the gross domestic product-price
7 index ("GDP-PI") from the preceding year as
8 the measure of inflation, or the GDP-PI from
9 the preceding year minus two (2) percentage
10 points. An incumbent local exchange telephone
11 company may adjust its rates for basic local
12 exchange telephone services or non-basic services
13 only so long as its aggregate revenues for basic
14 local exchange telephone services or non-basic
15 services generated by such changes do not exceed
16 the aggregate revenues generated by the maximum
17 rates permitted by the price regulation plan.
18 (Emphasis added.)
19

20 The stipulation establishes the method of determining the
21 cumulative percentage increases and the maximum cumulative
22 increase allowed over a period of years assuming that rates are
23 increased the maximum allowed each year in accordance with Tenn.
24 Code Ann. § 65-5-209. The stipulation does not modify the provisions
25 of the statute and does not allow UTSE to increase rates in any one
26 year more than the amount otherwise allowed under the statute. The
27 maximum increase in any one year continues to be limited by the
28 statute.

29 Additionally, the stipulation as interpreted by UTSE does
30 conflict with the Telecommunications Act of 1996 and the FCC order

1 in Docket #96-128. Section 276(b)(1)(B) of the Telecommunications
2 Act (See Attachment E) directs the FCC to "discontinue the intrastate
3 and interstate carrier access charge payphone service elements and
4 payments.... and all intrastate and interstate payphone subsidies from
5 basic exchange and exchange access revenue...." In its Docket #96-
6 128, the FCC ordered such subsidies to be removed. UTSE has
7 notified the TRA that its intrastate rates included an estimated subsidy
8 for payphone operations of \$143,500. (See Attachment D.) UTSE
9 reduced its access charges to remove the subsidy in April 1997. If the
10 base rates in effect on June 6, 1995 are used in the computation of the
11 SPI as proposed by UTSE, this subsidy is restored. Clearly, this is
12 contrary to the FCC's Orders.

13
14 **Q. Does the methodology as adopted in the stipulation create an**
15 **additional limit that was not specifically identified in Tenn. Code**
16 **Ann. § 65-5-209?**

17 **A.** Yes, it could. If the mix in the type of services being provided
18 were to change materially, the formula for establishing the maximum
19 cumulative increase could prohibit a company from increasing rates in
20 any one year to the full amount otherwise allowable under Tenn. Code
21 Ann. § 65-5-209.

22 Attachment C to my testimony is an example of how the

1 stipulation could result in rates that are less than the maximum allowed
2 under Tenn. Code Ann. § 65-5-209.

3 As shown on page 3 of the example, the adjustment allowed
4 under Tenn. Code Ann. § 65-5-209 is a .8% reduction. The
5 cumulative PRI as computed in accordance with the stipulation is
6 100.29%. However, when calculated using the rates that produce the
7 .8% reduction the SPI is 101.23%. Since under the stipulation the SPI
8 cannot exceed the PRI, the proposed rates that produce a .8% reduction
9 would exceed those allowed under the stipulation. In this example, the
10 rates allowed under the stipulation would be lower than those allowed
11 by Tenn. Code Ann. § 65-5-209.

12 This does not indicate that the stipulated methodology is faulty.
13 The parties simply agreed to a methodology that may result in some
14 instances where rates are lower than the maximum allowed otherwise
15 under the statute. As a result, the stipulation serves as the limiting
16 factor. This does not indicate that there is a conflict between the
17 statute and the stipulation since the resulting rates are lower than the
18 maximum allowed by the statute. I have been advised by counsel that
19 while the parties may agree on a procedure that imposes an additional
20 limit on the level of rates, the parties cannot implement a procedure
21 that results in rates greater than those allowed by statute.
22

1 Q. What caused the stipulation methodology to result in a lower rate
2 level in the example?

3 A. The change in the mix of services. I point out that this is a
4 hypothetical example that is being used for illustrative purposes and
5 does not reflect an actual change in mix that has occurred.
6

7 Q. Does this conclude your testimony?

8 A. Yes, it does.
9
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Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: UNITED TELEPHONE-SOUTHEAST, INC. TARIFF TO REFLECT
PROPOSED CHANGES UNDER PRICE REGULATION PLAN

DOCKET NO. 98-00626

EXHIBITS

April 30, 1999

Attachment A

Robert T. Buckner (Terry)

Senior Regulatory Analyst

Office of the Attorney General for the State of Tennessee

Consumer Advocate Division

Additional Education Background:

Micro-Computer Training, **University of Wisconsin, Madison**

Cost Separations School, **United States Telephone Association, San Diego**

Rate Case School, **Arthur Andersen LLP, Chicago**

Telecommunications Conference, **University of Georgia, Athens**

NARUC Conference, **Michigan State University, Lansing**

Management Training Seminar, **Vanderbilt University**

Interstate Access Settlements, **National Exchange Carrier Association**

SEARUC Conferences, **Birmingham, AL. and Charleston, S.C.**

Telephone Plant Accounting Program, **Ernst and Young LLP, Atlanta**

ATTACHMENT B

Sprint United Telephone-Southeast, Inc
1998 Annual Price Adjustment Filing

Line	Aggregate Non-Basic Revenues at Current Rates	Aggregate Non-Basic Revenues @ 6/98 Rates	
1	General Subscriber Service Tariff	\$30,697,976 40	a/
2	Access	9,103,137 60	b/
3	Directory Revenue	58,353 60	c/
4	Miscellaneous Revenues	4,132,349 88	d/
5	Total Non-Basic per Company [L1+L2+L3+L4]		\$43,991,817 48
<u>Computation of the Maximum Adjustment Factor</u>			
6	Inflation First QTR 1997 vs First Qtr 1998	1 20% e/	
Maximum Annual Adjustment Factor is the lesser of			
7	1/2 Inflation Rate [L6 X 5]	0 60%	
	or		
8	Inflation less 2% [L6-2%]	-0 80%	
9	Maximum Adjustment Factor [L8]		-0 80% f/
Maximum Allowed Annual Adjustment to Aggregate			
10	Non-Basic Revenue [L5 X L9]		(\$351,934 54)
<u>Aggregate Non-Basic Revenues Proposed Rates</u>			
11	General Subscriber Service Tariff	\$32,755,722 24	a/
12	Access	9,120,864 00	b/
13	Directory Revenue	58,353 60	c/
14	Miscellaneous Revenues	4,132,349 88	d/
	Total Company Proposed Non-Basic Revenue		
15	[L11+L12+L13+L14]	\$46,067,289 72	
UTSE Proposed Increase in Aggregate Non-Basic			
16	Revenues [L15-L5]		\$2,075,472 24
Proposed Increase in Aggregate Non-Basic Revenues			
17	Exceeds Allowed Adjustment [L16-L10]		\$2,427,406 78
UTSE Proposed % Increase in 1998 Non-Basic			
18	Aggregate Revenues	4 72%	

a/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service Price out page 12

b/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service (Access) Price out page 2

c/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service General Ledger [Directory compensation] page 1

d/ Sprint UTSE Filing as revised 10/16/98 Non-Basic Service General Ledger [Miscellaneous] page 1

e/ ATTACHMENT B of Sprint UTSE's Filing as revised 10/16/98

f/ Tenn Code Ann 65-5-209

Hypothetical Example

Proposed changes for each of the three years fall under the maximum annual increase allowed under Tenn Code Ann. 65-5-209. However in the third year the proposed rates exceed the maximum level established by the Stipulation accepted in 1996.

Assumptions:

	Year 1	Year 2	Year 3
Inflation (GDP-PI)	2.40%	2.70%	1.20%
Maximum Factor [Lesser of (1/2)X(GPI-PI) or(GDP-2%)]	0.40%	0.70%	-0.80%
Year 1 - rate reduction			
Year 2 - No rate change			
Year 3- Rate reduced inaccordance with Tenn. Code Ann 65-5-209			

Computed Results

Computed Annual Increase	-1.00%	0.00%	-0.80%
Computed PRI per Stipulation	100.40%	101.10%	100.29%
Computed SPI per Stipulation	99.00%	99.00%	101.23%
SPI Exceeds the Cumulative PRI by			0.93%

Year 1

Comparison of SPI, PRI, and Annual Increase

Base/Current Rates				Proposed Rate			
Service	Volume	Initial Rates	Revenue	Volume	Proposed Rates	Revenue	
Service 1	1,000	\$1,000	\$1,000.00	1,000	\$0.9900	\$990.00	
Service 2	4,000	2,0000	8,000.00	4,000	\$1.9800	7,920.00	
Service 3	200	5,0000	1,000.00	200	\$4.9500	990.00	
Service 4	600	7,0000	4,200.00	600	\$6.9300	4,158.00	
Service 5	800	3.0000	2,400.00	800	\$2.9700	2,376.00	
Service 6	900	4,0000	3,600.00	900	\$3.9600	3,564.00	
			\$20,200.00				
				Aggregate Revenue		\$19,998.00	99.00% SPI
				PRI			100.40% PRI
				Annual % Change			-1.00%
				Cumulative Change			-1.00%

Year 1 proposed rate changes comply with both Tenn Code Ann 65-5-209 and the Stipulation

Hypothetical Example
Year 2

Comparison of proposed increase with annual limit per statute.

Service	Current Rates			Proposed Rate			
	Current Volumes	Current Rates	Current Revenue	Proposed Volume	Proposed Rates	Proposed Revenue	
Service 1	1,100	\$0.9900	\$1,089.00	1,100	\$1.2500	\$1,375.00	
Service 2	4,500	1.9800	8,910.00	4,500	2.2500	10,125.00	
Service 3	300	4.9500	1,485.00	300	4.9500	1,485.00	
Service 4	650	6.9300	4,504.50	650	6.9300	4,504.50	
Service 5	850	2.9700	2,524.50	850	2.9700	2,524.50	
Service 6	1,000	3.9600	3,960.00	1,000	2.4590	2,459.00	
Aggregate Revenues			\$22,473.00	Aggregate Revenues		\$22,473.00	100.00%
				Allowed annual Increase			0.70%
				Annual % Change			0.00%

Comparison of PRI with SPI

Service	Base Rates			Proposed Rate			
	Current Volumes	Initial Rates	Initial Revenue	Proposed Volume	Proposed Rates	Proposed Revenue	
Service 1	1,100	\$1.0000	\$1,100.00	1,100	\$1.2500	\$1,375.00	
Service 2	4,500	2.0000	9,000.00	4,500	2.2500	10,125.00	
Service 3	300	5.0000	1,500.00	300	4.9500	1,485.00	
Service 4	650	7.0000	4,550.00	650	6.9300	4,504.50	
Service 5	850	3.0000	2,550.00	850	2.9700	2,524.50	
Service 6	1,000	4.0000	4,000.00	1,000	2.4590	2,459.00	
Aggregate Revenues			\$22,700.00	Aggregate Revenues		\$22,473.00	99.0000% =SPI
				Cumulative % Change			-1.00%
							101.10% =PRI
				Allowed Cumulative % Change			1.10%

Year 2 proposed rate changes comply with both Tenn. Code Ann. 65-5-209 and the 1996 Stipulation

Hypothetical Example
Year 3

Comparison of proposed increase with annual limit per statute.

Service	Current Rates			Volume	Proposed Rate		
	Current Volumes	Current Rates	Current Revenue		Proposed Rates	Proposed Revenue	
Service 1	3,100	\$1.2500	\$3,875.00	3,100	\$1.5000	\$4,650.00	
Service 2	5,000	\$2.2500	11,250.00	5,000	\$2.3000	11,500.00	
Service 3	450	\$4.9500	2,227.50	450	\$4.9000	2,205.00	
Service 4	700	\$6.9300	4,851.00	700	\$6.9300	4,851.00	
Service 5	860	\$2.9700	2,554.20	860	\$2.9000	2,494.00	
Service 6	900	\$2.4590	2,213.10	900	\$1.1720	1,054.80	
Aggregate Revenues			\$26,970.80	Aggregate Revenues		\$26,754.80	99.20%
				Allowed annual Increase			-0.80%
				Annual % Change			-0.80%

Comparison of PRI with SPI

Service	Base Rates			Volume	Proposed Rate		
	Current Volumes	Initial Rates	Initial Revenue		Proposed Rates	Proposed Revenue	
Service 1	3,100	\$1.0000	\$3,100.00	3,100	\$1.5000	\$4,650.00	
Service 2	5,000	\$2.0000	10,000.00	5,000	\$2.3000	11,500.00	
Service 3	450	\$5.0000	2,250.00	450	\$4.9000	2,205.00	
Service 4	700	\$7.0000	4,900.00	700	\$6.9300	4,851.00	
Service 5	860	\$3.0000	2,580.00	860	\$2.9000	2,494.00	
Service 6	900	\$4.0000	3,600.00	900	\$1.1720	1,054.80	
Aggregate Revenues			\$26,430.00	Aggregate Revenues		\$26,754.80	101.23% =SPI
				Cumulative % Change			1.23%
				PRI			100.29% PRI
				Allowed Cumulative % Change			0.29%

Year 3 rate changes comply with the limit in Tenn. Code Ann. 65-5-209 but exceed the limit established by the 1996 Stipulation.

Computation of Cumulative Adjustment Limit

	First Qtr. 1995 vs First Qtr 1996	First Qtr. 1996 vs First Qtr 1997	First Qtr. 1997 vs First Qtr 1998
Inflation (GPI-PI)	2.40%	2.70%	1.20%
Calculation			
Step 1			
Base Rate of 100	100.00%	100.00%	100.00%
Step 2			
Plus: The lessor of			
1/2 Inflation Rate	1.20%	1.35%	0.60%
or			
Inflation Rate - 2%	0.40%	0.70%	-0.80%
Annual Adjustment Factor Tenn Code Ann. 65-5-209	0.40%	0.70%	-0.80%
	100.40%	100.70%	99.20%
Step 3			
Divided by 100%	1.004	1.007	0.992
Step 4			
Current PRI	100.00%	100.40%	101.10%
New PRI=Current PRI X Annual Adjustment Factor	100.4000%	101.1028%	100.2940%

Attachment D

May 27, 1997

MEMORANDUM

TO: Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director

FROM: Chris Klein, Chief Utility Rate Division
Mike Gaines, Telecommunications Manager

SUBJECT: Tariff filing by United Telephone Southeast (UTSE) to reduce the intrastate CCLC access rate to remove the subsidy to pay telephones. Tariff 97-206, Docket 97-00409

UTSE filed tariffs effective April 1, 1997, to remove payphone operations from its tariffs. At that time, UTSE estimated the subsidy to payphone operations to be immaterial and did not reduce rates. However, on May 19, 1997, UTSE submitted a revised subsidy estimate and filed this tariff to reduce access rates \$143,500, effective the same day.

The Staff reviewed this estimated amount, but has not audited the number because this matter will be addressed in the pending Payphone Docket 97-00409. Unless otherwise notified, this tariff will go into effect pending the outcome of Docket 97-00409.

cc: Docket File 97-00409

Telecommunications Act of 1996 Section 276

"SEC. 276. PROVISION OF PAYPHONE SERVICE.

"(a) NONDISCRIMINATION SAFEGUARDS.--After the effective date of the rules prescribed pursuant to subsection (b), any Bell operating company that provides payphone service--

"(1) shall not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and

"(2) shall not prefer or discriminate in favor of its payphone service.

"(b) REGULATIONS.--

"(1) CONTENTS OF REGULATIONS.--In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after the date of enactment of the Telecommunications Act of 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--

"(A) establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation;

"(B) **discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and exchange access revenues, in favor of a compensation plan as specified in subparagraph (A);** (Emphasis Added)

"(C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a), which safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry-III (CC Docket No. 90-623) proceeding;

"(D) provide for Bell operating company payphone service providers to have the same right that independent payphone providers have to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA calls from their payphones, unless the Commission determines in the rulemaking pursuant to this section that it is not in the public interest; and

"(E) provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

"(2) PUBLIC INTEREST TELEPHONES.--In the rulemaking conducted pursuant to paragraph (1), the Commission shall determine whether public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would otherwise not be a payphone, should be maintained, and if so, ensure that such public interest payphones are supported fairly and equitably

"(3) EXISTING CONTRACTS.--Nothing in this section shall affect any existing contracts

between location providers and payphone service providers or interLATA or intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996

"(c) STATE PREEMPTION.--To the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.

"(d) DEFINITION --As used in this section, the term 'payphone service' means the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services."

IN RE: UNITED TELEPHONE-
SOUTHEAST, INC. TARIFF TO
REFLECT PROPOSED CHANGES
UNDER PRICE REGULATION PLAN

DOCKET NO. 98-00626

I, Robert T. Buckner, Senior Regulatory Analyst for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Direct Testimony represents my opinion in the above referenced case and the opinion of the Consumer Advocate Division.

Long Bridge

Sworn to and subscribed before me
this 13th day of April, 1999.

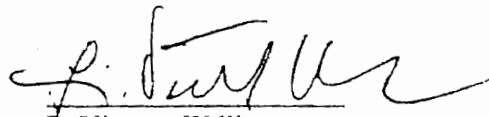
Teresa A. Harris
NOTARY PUBLIC

My commission expires on. Jan. 25, 2003

CERTIFICATE OF SERVICE

I hereby certify that this document was served on parties of record by U.S. Mail or by facsimile this 3rd day of April, 1999.

James B. Wright, Esq.
United Telephone-Southeast, Inc
14111 Capital Blvd.
Wake Forest, NC 27587-5900



L. Vincent Williams

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July 30, 1999

Mr David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Proceeding for the Purpose of Addressing Competitive Effects of Contract Service
Arrangements Filed by BellSouth Telecommunications, Inc. in Tennessee
Docket No. 98-00559

Dear Mr. Waddell:

I have enclosed an original and thirteen copies of Rebuttal Testimony of Consumer Advocate Division witness Robert T. Buckner, Senior Regulatory Analyst, in the above referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

L. Vincent Williams
Consumer Advocate

c: Counsel of record

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: PROCEEDING FOR THE PURPOSE OF ADDRESSING COMPETITIVE EFFECTS
OF CONTRACT SERVICE ARRANGEMENTS FILED BY BELLSOUTH
TELECOMMUNICATIONS, INC. IN TENNESSEE
DOCKET NO. 98-00559

REBUTTAL TESTIMONY
of
ROBERT T. BUCKNER

July 30, 1999

1 Q. Please state your name for the record.

2 A. My name is Robert T. ("Terry") Buckner.

3

4 Q. By whom are you employed and what is your position?

5 A. I am employed by the Consumer Advocate Division ("CA") in
6 the State of Tennessee Attorney General's Office as a Senior Regula-
7 tory Analyst.

8

9 Q. How long have you been employed in the utility industry?

10 A. Approximately twenty years. Before my employment with the
11 Attorney General, I was employed with the Tennessee Public Service
12 Commission ("Commission") as a financial analyst for approximately
13 six years. Prior to my employment with the Commission, I was
14 employed by Telephone and Data Systems ("TDS Telecom") for eight
15 years and the First Utility District of Knox County for three years.

16

17 Q. What is your educational background and what degrees do you
18 hold?

19 A. I have a Bachelors degree in Business Administration from the
20 University of Tennessee, Knoxville with a major in Accounting. I am
21 also a Certified Public Accountant, a member of the Tennessee Society
22 of Certified Accountants, and a member of the American Institute of

1 Certified Public Accountants. Additional education background with
2 respect to my qualifications is provided in Exhibit RTB-1.

3

4 **Q. Would you briefly describe your responsibilities as a Senior**
5 **Regulatory Analyst since your employment with the CA?**

6 A. Before becoming a member of the CA, I prepared testimony and
7 financial exhibits as an employee with the Commission. Since
8 becoming employed with the CA, my responsibilities have not
9 changed significantly.

10

11 **Q. What is the purpose of your testimony before the Tennessee**
12 **Regulatory Authority ("TRA")?**

13 A. The purpose of my testimony is to present factual information,
14 which supports the CA's position concerning the two Contract Service
15 Arrangements ("CSAs") initiated by BellSouth ("Bell") in TRA
16 Dockets #99-00210 and #99-00244, CSA's TN98-2766-00 and KY98-
17 4958-00 respectively, and to respond to the positions taken by Bell's
18 witness Frame.

19

20 **Q. Have you done any other analysis of Bell's CSAs than the work**
21 **specifically related to these two CSAs?**

22 A. Yes. In Docket #97-01105, I reviewed many of Bell's CSAs

1 that had been filed for period of time in 1997. I set forth the results of
2 my review in a document filed in that docket entitled, *Consumer*
3 *Advocate Division's Comments on BellSouth's Contract Service*
4 *Arrangements*, July 22, 1998. At this time, I wish to adopt my opinion
5 as set forth in that document as part of my testimony in the present
6 Dockets. A copy of the Comments on BellSouth's Contract Service
7 Arrangements is attached as Exhibit RTB-2.

8
9 **Q. In your investigation of Docket #97-01105, what was Bell's**
10 **apparent motive for CSAs?**

11 A. I met with representatives of Bell on February 18, 1998 to
12 discuss the matter of CSAs. I concluded from our discussions that it
13 was Bell's position that there were three basic reasons for the CSAs:
14 (1) Response to a competitive telecommunications provider; (2) To
15 protect Bell's revenue stream for the long-term; and (3) As an
16 incentive for customers to increase the usage of services.

17
18 **Q. In the meeting of February 18, 1998, what was the basis for**
19 **determining discount levels?**

20 A. The basis for determining the discount levels was the following:
21 (1) Up to the individual marketer; (2) There was no specific Bell
22 policy for determination; and (3) The discount amount was dependent

1 upon the volume of services purchased by the customer.

2

3 **Q. How is the information gained in Docket #97-01105 relevant to**
4 **these Dockets?**

5 A. I believe that the information is relevant in that it is indicative of
6 the fluid and evolving nature of the CSAs in Tennessee. Additionally,
7 there is evidence of anti-competitive behavior and price
8 discrimination.

9

10 **Q. In these Dockets, the Bell witness, Mr. Frame, defends the CSAs**
11 **primarily on the basis of competition. (See Frame Direct**
12 **Testimony, Page 2, Lines 19-21.) Has the TRA, the FCC, or any**
13 **other authority found that Bell has complied with the**
14 **requirements necessary to open its local market in Tennessee to**
15 **competition?**

16 A. No. The Telecommunications Act of 1996 requires incumbents
17 such as Bell to take action to allow competition to develop in the local
18 market. Those requirements are found in Sections 251 and 252 of the
19 Act. In Section 271(B), a checklist is provided for determining if an
20 incumbent Regional Bell Operating Company ("RBOC"), such as Bell,
21 has complied with Sections 251 and 252. Neither the TRA, the FCC,
22 nor any other appropriate authority has found that Bell has yet

1 complied with the requirements of the Act in Tennessee.

2 In May 1998, the TRA conducted an extensive hearing of more
3 than ten days in Docket #97-00309 for the purpose of determining if
4 Bell had opened its local market in Tennessee to competition in
5 accordance with the Act and as required to be eligible to enter the
6 regional interLATA long distance market. On April 8, 1999, Bell filed
7 a Notice of Voluntary Dismissal and Withdrawal in Docket #97-00309
8 volunteering to withdraw its request that the TRA find that it had
9 opened its market to allow competition as required by the
10 Telecommunications Act of 1996. Since April 8, 1999, Bell has not
11 filed or otherwise provided persuasive evidence that it has opened its
12 local Tennessee market to competition..

13
14 **Q. Have you reviewed the "Rate Assurance" provisions included in**
15 **the CSA identified by Bell as CSA TN-98-2766-00?**

16 **A.** Yes, on page 9 of the CSA TN98-2766-00 in Docket #99-
17 00210, the following provision is found:

18 If _____ is offered a service proposal
19 from an unauthorized carrier that is
20 comparable both in rate and in level of
21 support provided by BellSouth for any V&T
22 Eligible Service which priced at least 15%
23 less than those provided to _____ by
24 BellSouth which priced at least 15% less
25 than those provided to _____ by BellSouth
26 then these services may be considered for a
27 price reduction. _____ shall provide

1 BellSouth written notice of the service
2 proposal, and sufficient information to
3 validate the terms and rates of the offer and
4 the option to respond to the alternative
5 proposal.

6 BellSouth shall respond in writing
7 within seven (7) calendar days as to whether
8 or not BellSouth will pursue a new rate for
9 _____. In the event BellSouth elects to
10 respond to the offering from the alternative
11 carrier and offers _____ a service proposal
12 with rates that are within ten percent (10%)
13 of the alternative carrier's competitive
14 offering, this agreement shall continue in
15 effect at the new customized rate and
16 charges until the expiration of the V&T
17 Agreement. The parties shall amend the
18 Minimum Annual Revenue Base and the
19 corresponding Discount Levels listed in
20 Appendix II to reflect the rate reduction and
21 any other portions of the Agreement
22 necessary to effect this Rate Assurance
23 Adjustment

24 If BellSouth elects not to respond to
25 the offer from the alternative carrier or does
26 not offer _____ a service proposal with rates
27 that are within ten percent (10%) of the
28 alternative carrier's offering, the parties shall
29 amend Appendix IA, Appendix IB and
30 Appendix II and any other pertinent
31 provisions of this Agreement as necessary to
32 reduce _____'s Minimum Annual Revenue
33 Base, the Annual Revenue Base and the
34 corresponding Discount Levels listed in
35 Appendix II, if necessary, to permit _____ to
36 purchase the services in question from the
37 alternative carrier.

38
39 While this provision is labeled "Rate Assurance," the assurance
40 provided is that Bell will be able to stop a customer from moving to a
41 competitor of Bell. This provision does not assure the customer that

1 Bell will match a competitor's offer. Instead, it tends to guarantee that
2 Bell can retain the customer by offering to provide the service at rates
3 that are 10% higher than the rates offered by the competitor. While
4 the customer could theoretically reject the higher Bell rates, the
5 punitive effect of the termination penalty included in the CSA would
6 likely result in any potential saving being captured by Bell and not by
7 the customer.
8

9 **Q. What amount of a discount would a competitor have to offer the**
10 **customer under this CSA before Bell would need to respond?**

11 A. Under this provision, a competitor would have to offer the
12 customer a rate that is 23.5% below Bell's Tariffed rate before Bell
13 would even have to consider responding.

14 As stated, the prices offered by the competitor must be priced at
15 least 15% less than those provided by Bell under the contract. Since
16 the CSA provides a discount of 10%, the prices under the CSA are at
17 90% of the tariffed rates for the services provided. A 15% reduction
18 in these rates would require the offered rates to be equal to 76.5% of
19 the tariffed rates. (90% X 85% = 76.5%) This, of course, reflects a
20 23.5% discount.
21
22

Bell CSA provided Discount off Tariffed Rates	10%
Bells' Rates as % of Tariffed	90%
The required competitive offer must be 15% below Bell	$90\% \times 85\% = 76.5\%$ of Tariffed Rates
Total minimum discounts offered by the Competitor	$100\% - 76.5\% = 23.5\%$

9 **Q. What level of a discount would Bell have to include in its counter**
10 **offer in order to invoke the termination penalty if the customer**
11 **elects to purchase service from the competitor?**

12 **A.** Since Bell needs only to come within 10% of the competitor in
13 order to bind the customer, Bell is only required to increase its contract
14 discount from 10% to 15.85%.

A competitor offers a 23.5% discount off Bell Tariffed Rates Competitors' rates as a percent of Tariffed	76.5%
Bells' response must be within 10% of Competitive offer	$79.5\% \times 110\% = 87.45\%$
Discount Required by Bell to retain the customer	$100\% - 87.45\% = 12.55\%$

25 As a result, the customer would not be able to take advantage of
26 what might otherwise be deemed a more economic and competitive
27 offer, but instead will be bound to Bell.

28 While the customer could theoretically reject the Bell counter
29 offer of the 15.85% discount, the punitive termination provision would

1 likely eliminate any savings.

2 How the termination provision would penalize the customer
3 depends on when the contract terminates. As Mr. Frame stated in his
4 pre-filed testimony, termination of the contract at the end of a contract
5 year results in a flat charge. (See Frame Direct Testimony, Page 18,
6 Lines 6-8.) However, if the contract is terminated during a contact
7 year, the charge is likely to be much greater.

8 IX Termination Liability

9 B If written notice of termination is delivered
10 to BellSouth to be effective prior to the end
11 of the current V&T Contract Year,
12 BellSouth will bill ____ the appropriate
13 termination charges calculated in A. above,
14 in addition to an amount equal to the
15 difference between the current Contract
16 Year to date billing for V&T Eligible
17 billings and the current year Minimum
18 Annual Revenue Base.

19
20 The Minimum Annual Revenue Base for CSA TN98-2766-00 is
21 \$5,750,000. Therefore, if the contract is to terminate in the middle of
22 the year and the customer has been billed only \$2,850,000, the
23 termination penalty will be \$2,850,000 in addition to the flat rate
24 charge as stated by Mr. Frame.

25

26

27

1 Q. Would the customer be subject to any additional termination
2 charges?

3 A. Yes. Paragraph C of Section IX of CSA TN98-2766-00
4 provides:

5 C. The application of termination charges
6 pursuant to this Section shall not affect the
7 application of termination charges pursuant
8 to the tariff or any other agreement.
9

10 In accordance with BellSouth's tariffs, the customer would be
11 liable for termination charges for some of the services listed on Mr.
12 Frame's Exhibit RLF-1. For example, from the discounted rate for
13 MegaLink® ISDN identified on the exhibit, it appears that the customer
14 has entered into a 49-72 month agreement¹ to purchase this service.
15 Therefore, the provision of BellSouth's Tariff Section B7.5.4 E would
16 apply.

17 Tariff Section B7.5.4

18
19 E. A Termination Liability Charge is applicable
20 at the date of termination. The applicable
21 charge is dependent on the contract period
22 subscribed to and will be equal to the
23 number of months remaining in the contract
24 times the monthly rate provided under the
25 contract.
26

27 Therefore, not only would the customer be liable for the

¹ The rate for MegaLink® ISDN on Exhibit RLF-1 is \$217.50 with a 13% discount
Therefore the pre-discounted rate would be \$250 (\$217.50 / 87% = \$250.00) BellSouth Tariff
Section 7.5.6 D (1) Primary Rate Interface for a 49-72 month commitment is \$250.00 / month
USOC PRFS1

1 termination penalty in Section IX of the CSA, but the customer would
2 also be required to pay \$250 for each MegaLink ®ISDN Primary Rate
3 Interface for each of the remaining months on its contract to purchase
4 MegaLink ®ISDN service.

5
6 **Q. Are the termination provisions in this CSA consistent with those**
7 **included in other Bell CSAs?**

8 A. No. The termination provisions in this CSA and CSA KY 98-
9 4598-00 are different from some other CSA's filed by Bell. For
10 example, in some CSAs the cancellation language is patterned as
11 follows:

12 If Subscriber cancels this Agreement
13 at any time prior to the expiration of
14 the service period set forth in this
15 agreement, Subscriber shall be
16 responsible for all termination
17 charges. Unless otherwise specified
18 by tariff, termination charges are
19 defined as **reasonable** charges due or
20 remaining as a result of the minimum
21 service period agreed to by Company
22 and Subscriber and set forth in the
23 Attachments. (Emphasis added.)
24

25 While the provision calls for the termination charge to be
26 reasonable, as evident from information obtained during our review of
27 the CSA process, the actual charges set forth in the CSA Attachments
28 are arbitrary and dependent upon the ability of the customer to

1 negotiate. For example, Bell provided copies of correspondence
2 between certain of its employees that included the following
3 discussions:

4wants the first year termination
5 liability to be reduced \$75K (\$325,000 to
6 \$250,000). This shouldn't be an issue since
7 I added an additional \$100K(sic) as a
8 termination liability in the first year of the
9 Supplemental agreement.

10
11I have done some calculations on
12 the services that we have under contract at
13 _____. Based on the termination penalties
14 on these contracts I share _____ concern that
15 they would be "double gigged" in the highly
16 unlikely event of an early termination on an
17 MSA. For example, if _____ enters into a 36
18 month MSA agreement with an effective
19 date of 2/01/97, but they cancel ALL
20 services through BellSouth at the conclusion
21 of year 1 on 2/01/98, their termination
22 penalties would be as follows

23
24 \$938,000 Contract termination penalties (ESSX,
25 SMARTPath, PRI ISDN, Synchronet)
26 \$775,000 MSA cancellation penalty at end of Year 1
27
28 \$1,713,000 TOTAL TERMINATION PENALTY

29
30 _____ understands that the individual
31 contracts and the MSA agreement are two
32 different issues, but they do not feel that we
33 should have such hefty penalties. My
34 contact tells me that if we can get the MSA
35 penalties more like the following, we can
36 continue with negotiations:

37
38 \$266,000 Year 1
39 \$134,000 Year 2

40
41 (See Exhibit RTB-3.)

1 From these statements, I infer that the termination liabilities
2 included in these contracts are not based on Bell's unrecovered costs
3 or damages that might be incurred by Bell if the contract is breached
4 by the customer. Instead, termination liabilities are largely arbitrary
5 and subject to the ability of the customer's and of Bell's negotiators.

6 Further, these exorbitant Termination Liability amounts are not
7 a financial incentive to the customer as Bell contends, but a penalty
8 imposed on customers. Otherwise, the customer might select services
9 from a competing telecommunications service provider that offers
10 more economical rates. A true financial incentive for the customer
11 would be additional discounts at greater service volumes, not the
12 penalty of paying for services the customer no longer wishes to
13 receive.

14 The revised termination provisions in CSA KY98-4598-00,
15 however, tie the penalties to the discounts received, and do not reflect
16 incurred costs or damages to Bell, which might result from the
17 termination of the contract.

18
19 **Q. Does CSA KY98-4958-00 include the same "Rate Assurance"**
20 **provisions as CSA TN98-2766-00?**

21 **A.** No. The Rate Assurance provision is not included in KY98-
22 4958-00.

1 Q. Is the computation of the termination penalty under CSA KY98-
2 4958-00 consistent with computation under CSA TN98-2766-00?

3 A. No. Although when Bell filed the CSA, a page identified as
4 "Additional Terms and Conditions" included replacement language for
5 the computation of the termination liability that would have been
6 similar, Mr. Frame testified that the substitute language was not
7 accepted for CSA TN98-2766-00. (See Frame Direct Testimony,
8 Page 17, Line 16.)
9

10 Q. Does the Consumer Advocate Division have a concern with the
11 termination provisions in CSA KY98-4958-00?

12 A. Yes. While the procedure for determining the termination
13 penalty is different in CSA KY98-4958-00 than in CSA TN98-2766-
14 00, it also results in an amount that is not related to any cost or
15 damages that Bell would incur as the result of the contract being
16 prematurely terminated.

17 In fact, the procedure works somewhat in reverse of what one
18 might expect. It would normally be expected, that the longer the
19 contract has been in effect and the less time remaining on the contract
20 when terminated, the smaller the termination liability. This is not the
21 case as stated in the revised language of CSA KY98-4958-00. The
22 termination penalty actually increases each month for the first year and

1 then remains constant. Therefore, if the customer terminates the
2 contact at the end of the first year or even at the end of the 35th month,
3 when there is only one month remaining on the contract, the
4 termination penalty will be the same. Obviously, any damages, that
5 Bell incurs as the result of the early termination, would not be the same
6 if the contract is terminated after one year when compared to
7 termination with only a month remaining. This termination penalty is
8 unjust and unreasonable.
9

10 **Q. You state that the termination penalty is not related to costs**
11 **incurred by Bell. Doesn't the revised language in KY98-4958-00**
12 **specifically address costs incurred by Bell?**

13 **A.** Yes, it does. The recovery of the costs, however, is in addition
14 to the penalty computed based on the length of time that the CSA has
15 been in place.
16

17 **Q. Are there other provisions in these CSAs that cause you concern?**

18 **A.** In addition to the anti-competitive "Rate Assurance" provision
19 in CSA TN98-2766-00 (TRA Docket #99-00210) and the punitive
20 termination provision as previously discussed, these and other CSAs
21 filed by Bell are discriminatory.
22

1 Q. Does Tennessee law prohibit discrimination?

2 A. Yes. Discrimination is addressed in several statutes. For
3 example, Tenn. Code Ann. §65-4-122. Discriminatory charges -
4 Reasonableness of rates - Unreasonable preferences - Penalties
5 provides the following:

6 (a) If any common carrier or public
7 service company, directly or indirectly, by
8 any special rate, rebate, drawback, or
9 other device, charges, demands, collects,
10 or receives from any person a greater or
11 less compensation for any service within
12 this state than it charges, demands,
13 collects, or receives from any other person
14 for service of a like kind under
15 substantially like circumstances and
16 conditions, and if such common carrier or
17 such other public service company makes
18 any preference between the parties
19 aforementioned such common carrier or
20 other public service company commits
21 unjust discrimination, which is prohibited
22 and declared unlawful. (Emphasis Added.)

23

24 Q. Is Bell a common carrier?

25 A. Yes.

26

27 Q. Does Bell directly or indirectly, by any special rate, rebate,
28 drawback, or other device, charges, demands, collects, or receives
29 from any person a greater or less compensation for any service
30 within this state than it charges, demands, collects, or receives

1 from any other person for service of a like kind under
2 substantially like circumstances and conditions?

3 A. Yes. Paragraphs II A, B, C, D, & E, III A of CSA KY98-4958-
4 00 (TRA Docket #99-00244) and paragraphs II A & B of CSA TN 98-
5 2766-00 (TRA Docket #99-00210) provide that service will be
6 furnished to these two customers at a discounted rate, with the amount
7 of the discount being dependent upon the amount of service to which
8 the customer commits to purchase. The level of the service
9 commitment is measured by total revenue collected from the
10 customers. If the actual volume (revenue) during the contract year
11 exceeds the projected volume, the customer is to receive a rebate.

12 As provided in paragraph III A, the customer served under CSA
13 TN98-2766-00 will be billed for services at rates 10% less than the
14 tariffed rates if the customer purchases the contracted level of service.
15 If, however, in accordance with paragraph XIV B, the customer's
16 annual billing equals or exceeds \$6,250,000, the customer will receive
17 a rebate equal to an additional 1%. If the customer's actual purchase
18 equals or exceeds \$6,750,000, the rebate is increased to an additional
19 2% and to an additional 3%, if the actual purchase equals or exceeds
20 \$7,250,000. Bell is providing these customers both a discount and a
21 rebate.
22

1 Q. Are the same discounts and rebates provided to these two
2 customers of the CSAs in this case?

3 A. No. When the discount and rebate provisions of the two
4 contracts in this proceeding are compared, it is obvious that the
5 amounts being charged, demanded, billed, and collected are lesser for
6 one than the other. For example, the customer served in CSA TN98-
7 2766-00 is required to purchase \$4,750,000 in order to obtain an 8%
8 discount, while the customer served under CSA KY98-4598-00 is
9 required to purchase half the service of \$2,375,000 to obtain the same
10 8% discount. In order to obtain an 11% discount, the customer served
11 under CSA TN98-2766-00 must purchase \$6,250,000 of service, while
12 the customer served under CSA KY98-4598-00 must purchase only
13 \$3,000,000.

14
15 Q. Is the difference in the amount of the discounts based on a
16 difference in the cost?

17 A. No. The CA previously requested Bell to admit that the
18 difference in the rates charged customers under the approved tariffs
19 and the CSAs was no greater than the difference in the cost of
20 providing the service to the customers served under the CSAs. Bell
21 responded that it could neither admit nor deny because it had not
22 performed the analysis required. Consistent with its response to our

1 discovery request, the cost studies filed by Bell in support of the CSAs
2 in this docket do not reflect customers specific cost, but are the same
3 cost supports that Bell filed in support of its tariffed rates for the
4 services provided under the CSA. When this data is reviewed, it found
5 that many of the services are common to both CSAs, and that the same
6 costs are identified. This again supports the position that the
7 difference in the rates charged under CSA KY98-4958-00 (TRA
8 Docket #99-00244) and CSA TN98-2766-00 (TRA Docket #99-
9 00210) is not based on the costs of providing the services.

10

11 **Q. Are the same discounts and rebates provided to these customers as**
12 **the discounts and rebates provided to other customers, who**
13 **purchase service under CSAs?**

14 **A.** No. To illustrate that different discounts and rebates are being
15 offered. The following table is provided, which identifies the percent
16 discount provided under the two CSAs that are the specific subject of
17 these dockets as well as discounts provided to customers that are
18 parties to four other CSAs filed by Bell. While each of the CSAs
19 requires the customer to commit to purchase service for a three year
20 period, the amount of service that the customers must agree to
21 purchase in order to qualify for the discounts varies greatly. As I
22 previously explained, the customer served in CSA TN98-2766-00 is

1 required to purchase \$4,750,000 in order to obtain an 8% discount,
2 while the customer served under CSA KY98-4598-00 is required to
3 purchase half the service, \$2,375,000 to obtain the same 8% discount.

4 In order to obtain an 11% discount, the customer served under
5 CSA TN98-2766-00 must purchase \$6,250,000 of service, while the
6 customer served under CSA KY98-4598-00 must purchase only
7 \$3,000,000.

8 This disparity in the amount of revenue required to obtain the
9 discount is also present with CSA TN97-1641-00, which requires the
10 customer to purchase \$5,000,000 of service to obtain a 12% discount,
11 while the customer served under CSA TN98-2766-00 must purchase
12 \$6,500,000.

13 Similarly, the customer that is a party to CSA TN97-5138-00
14 receives a 10.5% discount by committing to purchase only \$1,360,000
15 of service, while the customers under CSAs TN98-2766-00 and
16 KY98-4598-00 must purchase \$5,750,000 and \$2,750,000
17 respectively, in order to obtain 10% discounts.

Other Example CSAs

Discount Provided by CSA	Required Volume under CSA TN98-2766- 00	Required Volume under CSA KY98-4598- 00	Required Volume under CSA TN96-7973- 01	Required Volume under CSA TN96-7961- 02	Required Volume under CSA TN97-1641- 00	Required Volume under CSA TN97-5138- 00	Required Volume under CSA TN96- 7967-03
2.0%							
3.0%							
4.0%			\$104,236				
5.0%				\$284,648			\$63,516
6.0%		\$2,000,000					
7.0%		\$2,250,000					
8.0%	\$4,750,000	\$2,375,000					
9.0%	\$5,250,000	\$2,500,000					
10.0%	\$5,750,000	\$2,750,000					
10.5%						\$1,360,000	
11.0%	\$6,250,000	\$3,000,000					
11.5%						\$1,632,000	
12.0%	\$6,750,000				\$5,000,000		
12.5%						\$1,904,000	
13.0%	\$7,250,000						

Q. Why is it appropriate to compare the discount in these CSAs that are subject to this proceeding with the discounts offered in other CSAs?

A. To determine if CSAs, CSA TN98-2766-00, and CSA KY98-4598-00 are discriminatory, it is not appropriate to simply compare the

1 rates charged the two customers served under these two CSAs. The
2 rates charged in these dockets must be compared to those charged
3 other customers, who are provided service under tariffed rates or under
4 other CSAs. The table, which is provided here, is not an attempt to
5 identify all of the CSAs that provide for discriminatory rates. The
6 comparisons' presented in the table, however, accurately represent the
7 unjust disparities in the rates that exist among the CSAs filed by Bell.
8

9 **Q. Have you made any comparison of the rates charged for specific**
10 **services billed under the CSAs and those for customers billed**
11 **under Bell's General Subscriber Service Tariff rates?**

12 A. Yes. The following table compares the rates charged for some
13 of the services under the provision of the CSAs with the rates for the
14 same service billed at the General Subscriber Service Tariff rates.
15 Again, these are only examples of the disparity and are not intended to
16 be all inclusive. Attachment III,² which was filed with the TRA in
17 support of CSA TN98-2766-00 and identifies the services provided in
18 accordance with that CSA, consists of 17 pages. I have not prepared a
19 schedule that compares the discounted rates charged with the tariffed
20 rates for each service on that listing or for all of the services listed on

² Exhibit RLF-1 filed by BellSouth as an exhibit to Mr. Frame's testimony is a duplicate of Attachment III.

1 similar supporting schedules filed in support of the other CSAs.

2 Instead, I have compared the rates for some of the more familiar
3 services.

4 As shown in this table, the price demanded, charged, and
5 collected from a customer, who purchases one party business line
6 (USOC³ 1FB) service at the tariffed rate in a Group 5 exchange is
7 \$39.70 per month. (Group 5 Exchanges are those exchanges, which
8 have 300,001 -500,000 lines, see BST TN Tariff Section A 3.2.1
9 Eighth Revised Page 1.1) Bell collects \$34.54⁴ per month for this
10 service from the customer billed in accordance with CSA TN98-2766-
11 00. This is a \$5.16 difference. The customer served under KY98-
12 4598-00 is charged \$35.53¹ and the customers served under CSAs
13 TN96-7961-02, TN97-1641-00, and TN97-5138-00 are charged
14 \$37.72, \$34.94, and \$31.87 respectively, for this same one party
15 business line service. This evidence shows an unjust difference in
16 rates for exactly the same service.

³ USOC (Universal Service Ordering Code)

⁴ This is the rate at the maximum discount level provided under the contract.

1 Q. Are their similar disparities between the rates charged customers
2 served under Bell's General Subscriber Service Tariff and those
3 served under these CSAs for other services?

4 A. Yes. The charges for single business lines in rate group 3 & 4
5 exchanges are compared as are the charges for MegaLink ® ISDN,
6 MegaLink ®Channel Service, and DID service: In each instance, the
7 customers, who are billed the General Subscriber Service Tariff Rates
8 pay more than those billed under the CSAs.

9
10 Q. Are the same amounts billed for these services under the various
11 CSAs?

12 A. No The discounts provided under the CSAs vary. Therefore,
13 the amount charged for the same services are different under the
14 various CSAs.

15

16

17

18

19

1	Service	USOC	Tariff Rate	Rate CSA TN98-2766-00 ⁵	Rate CSA KY98-4958-00 ¹	Rate CSA TN96-7961-02	Rate CSA TN96-7973-01	Rate CSA TN97-1641-00	Rate CSA TN97-5138-00 ¹
2	Flat Rate Business Line	1 FB Group 5	\$39.70	\$34.54	\$35.33	\$37.72		\$34.94 ⁶	\$31.87 ⁷
3									
4	Flat Rate Business Line	1 FB Group 4	\$39.05	\$33.97	\$34.75				
5									
6	Flat Rate Business Line	1 FB Group 3	\$32.75	\$28.49	\$29.15		\$31.44 ⁸		
7									
8	Megalink ISDN	PRFS1 (3yr commit)	\$260.00	\$217.50 ⁹		\$247.00	\$240.00		
9									
10	Megalink Channel Service	VUM 24 (3 yr commit)	\$189.00	\$182.70 ¹⁰	\$168.21				\$165.38
11									
12	DID/AIOD	NDT	\$20.00 ¹¹	\$17.40	\$17.80	\$19.00	\$19.20	\$17.60	\$17.56

⁵ Prices based on the maximum discount provided under the CSA

⁶ Tariff Rate Group 1 \$39.70 X 88% = \$34.94 (100% - 12% = 88%)

⁷ Discounted rate per workpapers filed with the TRA Staff in support of CSA

⁸ Clarksville is a Class 3 rate schedule wire center. The business rate for a class 3 wire center is \$32.75 (BellSouth Tariff Eighth revised page 1.1 Tariff Section A3 2 1, and Fifteenth revised page 20, Tariff Section A3 7 1) Discount is 4% \$32.75 X 96% = \$31.44.

⁹ The Tariff rates for MegaLink@ISDN service are \$360/ month, Month to Month, \$260/ month with a contract commitment 24 - 48 months, \$250/ month with a contract commitment 49-72 months, \$240 / month with a contract commitment 73 - 96 months (BellSouth Tariff Section B7 5.6 First Revised Page 37 4) While each of these contracts are for 3 years the discount for MegaLink @ISDN service under CSA TN98-2766-00 appears to have been computed on Attachment III assuming a \$250 / month rate indicating a commitment of at least 49 months. It appears that the discounted rate for TN96-7961-02 was computed based on the \$260/month for a 3 yr commitment. The discounted rate for TN96-7973-01 again appears to have been computed assuming that the \$250/month rate for a 49 to 72 month commitment was used. \$250 discounted 4% is \$240.

¹⁰ The Tariff rates for MegaLink@ Channel Service are \$210/month, Month to Month, \$189/ month with a contract commitment 24 - 48 months, \$171/ month with a contract commitment 49-72 months, \$154/ month with a contract commitment 73 - 96 months (BellSouth Tariff Section B7 3 4 First Revised Page 19) Each of these contracts are for 3 years. Therefore it would appear that the discounts would have been computed based on the \$189 tariffed rates. The discounted rate for CSA TN98-2766-00 would be \$164.43 (13% discount) instead of the discounted rate of \$182.70 based on the Month to Month rate of \$210. The result is an actual discount is only 3.4%. (\$182.70/\$189=96.6%) [Four MegaLink@ Channel were discounted to \$164.43, apparently based on a 3 yr contract commitment.]

The discounted rate for KY98-4958-00 was computed correctly using the \$189 rate for a 24-48 month contract. \$189 discounted at 11% is \$168.21

¹¹ BellSouth Tariff Section A12.7 2 Eighth Revised Page 2

1 Q. Is the customer billed under CSA TN98-2766-00 provided any
2 additional discounts from that specified in the CSA?

3 A. Yes. For example, Bell's Tariff Section B7.5.6 First Revised
4 Page 37.4 provides that the monthly rate for MegaLink® ISDN service
5 is \$360. If the subscriber commits to take the service for a period of
6 24 to 48 months, the rate is discounted to \$260. (A 27.7% discount.)
7 If the customer commits to take the service for a period of 49 to 72
8 months, the rate is reduced to \$250 and to \$240 with a commitment of
9 from 73 to 96 months. From the price-out filed by Bell with the
10 Authority in support of this CSA, it is apparent that the customer is
11 being given a discount for committing to purchase MegaLink® ISDN
12 for at least four years. The discounted rate shown on Attachment III
13 filed in support of the CSA is \$217.50 per month, which is a 13%
14 discount off of the \$250 tariffed rate charged to a customer that signed
15 a 49 to 72 month commitment. It appears that the service billed in
16 accordance with CSA TN98-2766-00 is receiving a 30.55% discount
17 for committing to continue to purchase the service as provided in the
18 tariff and an additional 10%-13% discount¹² under the CSA for a total
19 discount of 37.5% to 39.6%¹³.

¹² The 13% discount assumes the customer billing reaches the maximum discount level provided under the CSA. The discount at the contract level is 10%.

¹³ At 10% discount level under the CSA the rates would be \$225. ($\$250 \times 90\% = \225) [$\$225/\$360 = 62.5\%$, $1 - 62.5\% = 37.5\%$] At 13% discount level under the CSA the rate would be

1 The customers billed under the provisions of CSAs KY98-4958-
2 00, CSA TN96-7961-02, CSA TN97-5138-00, and CSA TN96-7973-
3 01 appear to have also received discounts in accordance with the
4 provision of the Tariffs in addition to the discounts provided in the
5 CSA.

6
7 **Q. Do the tariffs also provide for termination penalties?**

8 **A.**Yes. The tariffs do have termination provisions. In some
9 instances, when the customer is provided a discount for committing to
10 purchase service over an extended period of time. For example, Bell's
11 Tariff Section B7.5.4 E provides that:

12 A Termination Liability Charge is
13 applicable at the date of termination. The
14 applicable charge is dependent on the
15 contract period subscribed to and will be
16 equal to the number of months remaining in
17 the contract times the monthly rate
18 provided under the contract.

19
20 Similar provisions are included in other tariff sections, where a
21 discounted rate is provided in exchange for customer's commitment to
22 purchase service over an extended period of time.

23
24 **Q. In the event that the customer being billed under the CSA**

$\$217.50 (\$250 \times 87\% = \$217.50) [\$217.50 / \$360 = 60.4\%, 1 - 60.4\% = 39.6\%]$

1 transfers the service to a competitor of Bell, which termination
2 penalty would apply?

3 A. Both penalties would apply. Section IX paragraph C of CSA
4 TN98-2766-00 and the first sentence of Section IX paragraph B of
5 CSA KY98-4958-00 provides the following:

6 The application of termination
7 charges pursuant to this Section shall
8 not affect the application of the
9 termination charges pursuant to the
10 tariff or any other agreement
11

12 Q. Mr. Frame, testifying on behalf of Bell, contends that the CSA
13 does not modify the tariffed rates:

14 Q. WHAT RATE OR PRICE DOES
15 BELL SOUTH CHARGE THIS
16 CUSTOMER FOR
17 TELECOMMUNICATIONS
18 SERVICES?
19

20 A. The rates charged to the customer
21 are those specified in the
22 appropriate tariffs and available
23 to any customer ordering the same
24 services. This CSA does not
25 modify those tariffed rates in any
26 way, but rather provides discounts
27 based on billed revenue from the
28 eligible services identified in the
29 contract. (See Frame Direct
30 Testimony, Page 7, Lines 12-17.)
31

32 Is this statement consistent with the documents that BellSouth has
33 filed in support of its CSAs?

1 A. No. In support of its CSAs, Bell had filed documents that
2 provide the same information as Frame Exhibit RLF-1, which
3 identifies each service subject to the CSA and for **each** such service
4 identifies the following:

- 5 1. The USOC
- 6 2. Service Description
- 7 3. Quantity
- 8 4. **Discounted Rate**
- 9 5. Annual Revenue
- 10 6. Unit Cost
- 11 7. Annual Cost
- 12 8. Annual Contribution
- 13 9. Percent Contribution
- 14 (Emphasis Added.)
- 15

16 **Q. You state that this document identifies the discounted rates for the**
17 **individual service provided under the CSA. Are the tariffed rates**
18 **for the individual service stated on the document?**

19 A. No. The tariffed rates for the services are not identified. The
20 only rates are the individual discounted rates. This document
21 identifies each individual service being discounted, and the discounted
22 rate to be billed under the CSA for each specific service.

23

24 **Q. Does the Frame Exhibit RLF-1 identify CSA rates for one party**
25 **business service in a Group 5 exchange than that charged for a**
26 **Group 4 exchange?**

1 A. Yes. On page 3 of Exhibit RLF-1 four rates are identified for
2 Flat Rate Business line: \$34.54, \$33.97, \$28.49, \$26.80 and \$23.93.

3
4 Q. Are these the tariffed rates for a Flat Rate Business line in the
5 various exchange groups?

6 A. No. These are the discounted rates. The tariffed rates for a 1
7 party business lines for group 5, group 4, group 3, group 2, and group
8 1 exchanges, are \$39.70, \$39.05, \$32.75, \$30.80, and \$27.05,
9 respectively. The tariff rates and the rates discounted at 13% as shown
10 on Mr. Frame's Exhibit RLF-1 are presented in comparative format in
11 the following table.

Service	Tariffed Rate ¹⁴	Tariffed Rate Discounted 13%
1 FB Group5 exchange	\$39.70	\$34.54
1 FB Group4 exchange	\$39.05	\$33.97
1 FB Group3 exchange	\$32.75	\$28.49
1 FB Group2 exchange	\$30.80	\$26.80
1 FB Group1 exchange	\$27.05	\$23.53

12
13
14
15
16
17
18
19 The filing of the exhibit that compares the revenue from the individual
20 services after a discount with the cost of providing the individual services is

¹⁴ BellSouth Tariff Section A3.2.1, Eighth Revised Page 11.

1 not consistent with Mr. Frames position that the individual service rates are
2 not discounted.

3

4 **Q. Are Bell's CSAs evidence of anti-competitive behavior?**

5 **A.** Yes. Bell's CSAs are evidence of anti-competitive behavior.

6 Tenn. Code Ann §65-5-208. Classification of services - Exempt
7 services - Price floor - Maximum rates for non-basic services states the
8 following:

9 (c) Effective January 1, 1996, an
10 incumbent local exchange telephone
11 company shall adhere to a price floor
12 for its competitive services subject to
13 such determination as the authority
14 shall make pursuant to § 65-5-207.
15 The price floor shall equal the
16 incumbent local exchange telephone
17 company's tariffed rates for essential
18 elements utilized by competing
19 telecommunications service
20 providers plus the total long-run
21 incremental cost of the competitive
22 elements of the service. When shown
23 to be in the public interest, the
24 authority shall exempt a service or
25 group of services provided by an
26 incumbent local exchange telephone
27 company from the requirement of the
28 price floor. **The authority shall, as
29 appropriate, also adopt other rules
30 or issue orders to prohibit
31 cross-subsidization, preferences to
32 competitive services or affiliated
33 entities, predatory pricing, price
34 squeezing, price discrimination,
35 tying arrangements or other
36 anti-competitive practices.**

(Emphasis added.)

1
2
3 **Q. Do the prices for services provided under the CSAs reflect price**
4 **discrimination?**

5 A. The economic definition of price discrimination is defined as,
6 "the practice of selling the same product at two or more prices where
7 the price differences do not reflect cost differences."¹⁵ The price of
8 service provided to the customers subject to the CSAs is different from
9 the price of the service when provided under tariff rates. In addition,
10 the same services provided under different CSAs are at different
11 prices.

12 Bell does not contend that the cost of providing the service
13 differs. In fact, the documents that Bell has filed in support of the
14 CSAs, which identifies the cost of the various services, is the same as
15 the cost used to support the tariffed rates. (See Attachment III to the
16 various CSAs and Bell's Exhibit RLF-1 filed with Mr. Frame's
17 testimony.) While the rates are different, the costs of providing the
18 service are the same. Bell is selling the same product at two or more
19 prices, where the price differences do not reflect cost differences. By
20 definition, the rates are discriminatory.

21

¹⁵ Kaserman, David L. and Mayo, John W., *The Economics of Antitrust and Regulation*,
Orlando. The Dryden Press, 1995

1 Q. Are there tying arrangements included within the CSAs?

2 A. While there is no specific wording in the CSA state there are
3 tying arrangements, Mr. Frame has entered testimony that; "...the
4 discount on billed revenue is determined by the specific mix for each
5 customer" (Frame Direct Testimony, Page 14, Lines 13-14.) The
6 discounts are therefore apparently specifically tied to the combination
7 of services purchased by the customer. This would indicate, that in
8 order to obtain a discount on one service, a customer may have to
9 purchase another specific service or a specific group of other services.

10

11 Q. Do the CSA's include other anti-competitive practices?

12 A. Yes. As Dr. Brown will provide in more detail, the CSAs
13 provide that Bell will react to the same economic event differently
14 based on the underlying cause of the event. If the event is caused by a
15 competitor, Bell's actions will be different from its actions if the event
16 has other causes. For example, in Paragraph X of CSA TN98-2766-
17 00, the following language is found:

18 In the event of a Business Change as
19 defined herein which significantly
20 reduces the volume of network
21 services required by_____, and those
22 subsidiaries listed in Appendix III,
23 with the result that _____ is unable
24 to meet its Minimum Annual
25 Revenue Base under this Agreement
26 (notwithstanding _____ best efforts
27 to avoid such a shortfall), BellSouth

1 and _____ shall cooperate in efforts
2 to develop a mutually agreeable
3 alternative that will **reduce** _____
4 **liability** under the Minimum Annual
5 Revenue Base, the Annual Revenue
6 Base and the Discount levels which
7 satisfies the concerns of both parties
8 and complies with all applicable
9 legal and regulatory requirements.
10 Such alternative will reduce the
11 Customer's Annual Revenue Base,
12 Minimum Annual Revenue Base and
13 the corresponding Discount levels to
14 the extent of any shortfall resulting
15 from a Business Change as defined
16 herein. **This provision shall not**
17 **apply to a change resulting from a**
18 **decision by _____ to transfer**
19 **portions of its traffic or projected**
20 **growth to providers other than**
21 **BellSouth. (Emphasis added.)**
22

23 Similar language is found in CSA KY98-4958-00.
24

25 **Q. How does this language indicate that Bell will react differently to**
26 **the same economic event dependent on the underlying cause?**

27 A. As stated in the previously quoted paragraph, Bell will work
28 with the customer and will reduce or adjust the minimum annual
29 revenue base and the related discount level if the decline is the result
30 of a business change. However, if the decline in demand is caused by
31 the customer electing to transfer part of its telecommunications
32 operations to a competitor of Bell, no such reduction will be made.
33 From Bell's perspective the end result of a decline in the level of

1 service purchased by the customer is the same. Bell will receive less
2 revenue. In accordance with the provision in the CSAs, Bell's actions
3 in response to such a decline will be different depending upon the
4 cause in the revenue decline and will be punitive toward the customer
5 if the decline is caused by a competitor. Dr. Brown will provide a
6 more thorough discussion on this matter.

7
8 **Q. In his testimony Mr. Frame states:**

9
10 Although I am not a lawyer, the
11 discount on billed revenue is
12 determined by specific service mix
13 for each customer as described
14 above. Because these customers
15 have a different product mix, they
16 are not similarly situated such that
17 BellSouth can lawfully offer the
18 customer different discounts and
19 revenue commitments. (See Frame
20 Direct Testimony, Page 14, Lines
21 13-16.)
22

23 **Do you agree with his conclusion that because two customers**
24 **subscribe to different groups of services they are not similarly**
25 **situated?**

26 **A.** No. If you accept his definition of similarly situated, the idea of
27 uniform tariffed rates for business services is useless. Using his
28 argument as justification, Bell could charge a business customer, who
29 subscribes to only a single business line, more for that line than it
30 would charge the customer's business neighbor for a single business

1 line, who also purchases a call forwarding. Since the customers would
2 have a different product mix, Mr. Frame's definition would allow Bell
3 to find that the two business customers would not be similarly situated.

4 Additionally, if a business customer had an office with three
5 business lines with caller ID on each line and another customer
6 occupying an adjacent office in the same building has four business
7 lines and call waiting on each line, Mr. Frame's definition would find
8 these customers are not similarly situated.

9 If adopted, Mr. Frame's definition of similarly situated could
10 virtually result in each customer being placed in a separate one
11 customer class.

12
13 **Q. Is there some relationship between the mix of services being**
14 **provided and the amount of discounts provided under the**
15 **individual CSAs?**

16 **A.** The revenue contribution is largely a matter of the mix of
17 services being provided. Using the revenue and cost data filed as
18 Bell's Exhibit RLF-1 and the corresponding schedules filed with other
19 CSAs, I have compared the discounts awarded with the weighted per
20 cent contribution before and after the discount for various CSAs. The
21 results as shown on Exhibit RTB-4 do not reflect a consistent pattern.
22 It does appear that the customers, whose mix of services produces the

1 lesser contributions before discounts, are the customers who are also
2 receiving the larger discounts. For example, the services discounted
3 under TN98-2766-00 produce a contribution of 127% before the rates
4 were discounted by 13%. Similarly, the services for CSA KY98-4958-
5 00 resulted in a contribution of 137% before the discounts of 11%-
6 13%. In contrast, the contributions from the services being
7 discounted under CSA TN97-7973-01 produce a contribution of 999%
8 before the 4% discount, while the services under CSA TN97-7961-01
9 produce a contribution of 540% before the 5% discount.

10
11 **Q. Did you compute the "contribution" consistent with the**
12 **computation on Bell's Exhibit RLF-1?**

13 **A. Yes.**
14

15 **Q. Are any of the services discounted under the CSA TN98-2766-00**
16 **and CSA KY98-4958-00 being discounted below the cost of**
17 **providing the service as identified by Bell?**

18 **A. Yes.** On Bell Exhibit RLF-1, there are 80 instances of service
19 being discounted below the cost as identified by Bell for CSA TN98-
20 2766-00 and 15 instances of service being discounted below cost under
21 CSA KY98-4958-00. The USOCs and the resulting negative
22 contributions are presented on Exhibit RTB-5. The service

1 descriptions, quantities, and cost of these are presented on Bell Exhibit
2 RLF-1.

3

4 **Q. Does this conclude your testimony?**

5 **A. Yes, it does.**

6

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

IN RE: PROCEEDING FOR THE)
PURPOSE OF ADDRESSING)
COMPETITIVE EFFECTS OF CONTRACT) DOCKET NO. 98-00559
SERVICE ARRANGEMENTS FILED BY)
BELLSOUTH TELECOMMUNICATIONS,)
INC IN TENNESSEE.)
)

AFFIDAVIT

I, Robert T. Buckner, Senior Regulatory Analyst, for the Consumer Advocate Division of the Attorney General's Office, hereby certify that the attached Rebuttal Testimony represents my opinion in the above referenced case and the opinion of the Consumer Advocate Division

Robert T. Buckner

Sworn to and subscribed before me
this 30th day of July, 1999.

Teresa A. Harris
NOTARY PUBLIC

My commission expires on: Jan. 25, 2003

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: PROCEEDING FOR THE PURPOSE OF ADDRESSING COMPETITIVE EFFECTS
OF CONTRACT SERVICE ARRANGEMENTS FILED BY BELL SOUTH
TELECOMMUNICATIONS, INC. IN TENNESSEE.
DOCKET NO. 98-00559

EXHIBITS
of
ROBERT T. BUCKNER

July 30, 1999

Robert T. Buckner (Terry)

Senior Regulatory Analyst

Office of the Attorney General for the State of Tennessee

Consumer Advocate Division

Additional Education Background:

Micro-Computer Training, University of Wisconsin, Madison

Cost Separations School, United States Telephone Association, San Diego

Rate Case School, Arthur Andersen LLP, Chicago

Telecommunications Conference, University of Georgia, Athens

NARUC Conference, Michigan State University, Lansing

Management Training Seminar, Vanderbilt University

Interstate Access Settlements, National Exchange Carrier Association

SEARUC Conferences, Birmingham, AL. and Charleston, S.C.

Telephone Plant Accounting Program, Ernst and Young LLP, Atlanta

Before the

TENNESSEE REGULATORY AUTHORITY

In Re: Nashville Gas Company

Docket No. 96-00977

DIRECT TESTIMONY

of

R. Terry Buckner

October 28, 1996

1 Q. Please state your name for the record.

2 A. My name is R. Terry Buckner.

3

4 Q. By whom are you employed and what is your position?

5 A. I am employed by the Consumer Advocate Division ("CA") in the
6 State of Tennessee Attorney General's Office as a Senior Regulatory
7 Analyst.

8

9 Q. How long have you been in the utility industry related
10 employment?

11 A. Approximately nineteen years. Before my employment with the
12 Attorney General, I was employed with the Tennessee Public Service
13 Commission ("Commission") as a financial analyst for approximately
14 six years. My responsibilities included testifying before the
15 Commission as to the appropriate cost of service for public utilities
16 operating in Tennessee. Prior to my employment with the
17 Commission, I was employed by Telephone and Data Systems
18 ("TDS") for eight years and the First Utility District of Knox County
19 for three years.

20

21

22

1 Q. What is your educational background and what degrees do you
2 hold?

3 A. I have a Bachelors degree in Business Administration from the
4 University of Tennessee, Knoxville with a major in Accounting. I am
5 also a Tennessee Certified Public Accountant and a member of the
6 American Institute of Certified Public Accountants.

7

8 Q. Would you briefly describe your responsibilities as a Senior
9 Regulatory Analyst since your employment with the CA?

10 A. I prepared testimony and exhibits as an employee with the
11 Commission before becoming a member of the CA. My
12 responsibilities have not been altered significantly since my
13 employment change.

14

15 Q. What is the purpose of your testimony?

16 A. The purpose of my testimony is to present information to the
17 Tennessee Regulatory Authority ("TRA") on the appropriate
18 operating expenses other than depreciation for the attrition year
19 November 1, 1996 to October 31, 1997 for Nashville Gas Company
20 ("Company"). Additionally, I will present the CA's calculation of
21 other taxes and income taxes for the attrition year.

22

1 Q. What is an attrition year?

2 A. An attrition year is a synonym for a forecasted or projected 12 month
3 period.
4

5 Q. Please identify the issues regarding operation and maintenance
6 expenses for Nashville Gas Company in Docket #96-00977?

7 A. The CA Exhibit, Schedule 8 indicates the differences in the CA and
8 the Company forecasted expenses for the twelve months ended
9 October 31, 1997. The total operation and maintenance expenses
10 projected by the CA are \$7,838,394 lower than the operation and
11 maintenance expenses projected by the Company for the attrition
12 year. The differences that make up this \$7.8 million include the
13 following just and reasonable exclusions, reductions and increases:
14 (1) the CA has excluded approximately \$1.6 million in excessive net
15 expense growth and inappropriate expenses for setting rates for the
16 ratepayer; (2) a \$1.9 million reduction in forecasted expenses
17 associated with sales promotion and advertising; (3) a \$1.3 million
18 reduction in forecasted allocated net pension expense; (4) a \$2
19 million reduction in allocated service company charges; (5) a \$.6
20 million reduction in the Company's Long Term Incentive Pay plan;
21 and (6) a \$.4 million increase in the amount of General and
22 Administrative expenses which are capitalized and charged to non-

1 regulated operations.

2

3 Q. Please explain the just and reasonable \$1.6 million exclusion due
4 to forecasted expense growth differences of the Company and the
5 CA for the attrition year.

6 A. The primary reason for the exclusion is the difference in forecasted
7 expense growth caused by the Company's use of an excessive
8 inflation factor and unsubstantiated growth rates for various
9 expenses. The CA used an annual customer growth of 5.1% and an
10 annual inflation rate of 2.39% which generates a compound growth
11 rate of 12.66% through the attrition year ended October 31, 1997.
12 The information used to determine the CA's forecasted inflation
13 factor was taken from the publication "Blue Chip Indicators."¹ The
14 percentage increase of the attrition year Gross Domestic Product
15 ("GDP") deflator over the test year GDP deflator, equates to an
16 annual inflation rate of 2.39%. The annual inflation rate of 2.39%
17 generates a compounded growth rate of 4.01%. The compound
18 growth rate of 12.66% (customer growth plus inflation growth
19 compounded) was applied to most of the CA's test year ended
20 February 1996 expenses excluding salaries and wages.

¹The Blue Chip Economic Indicators publication is a consensus summary of fifty top economists in the United States.

1 Q. How does the 12.66% growth rate compare with the Company's
2 experience in recent years?

3 The CA's compounded growth rate is somewhat greater than the
4 actual annual expense growth of the Company over the last thirty-
5 three months ended April 1996 of 3.735%, which was a compounded
6 growth rate of 10.61%. In contrast, the Company used an unjust and
7 unreasonable projected 16.10% compounded growth rate for a
8 twenty-two month period ending October 31, 1997 for certain
9 expense items based on an annual inflation rate of 3.2% and an
10 annual customer growth rate of 5.1%. The Company's overall
11 operation and maintenance expenses, however, are projected to grow
12 21.31% for the attrition year over actual 1995.

13 One difference from the CA projection is that, instead of using the
14 GDP deflator, the Company used the CPI inflation indicator from the
15 Economic Forecasting Center of Georgia State University for its
16 speculative annual inflation rate. The GDP deflator, which was used
17 by the CA, has been traditionally used by the Commission and TRA
18 staff, not the CPI inflation factor proposed by the Company. Current
19 evidence supports the CA's projected annual inflation rate of 2.39%.
20 The difference in growth rates results in a lower expense amount of
21 approximately \$1.1 million for expenses excluding salaries and
22 wages.

1 This amount, also, recognizes an error by the Company in their
2 growth of Injuries and Damages of approximately \$.4 million. The
3 Company miscalculated their projected amount of Injuries and
4 Damages for the attrition year. Additionally, the CA has deducted
5 \$145,983 of non-recurring expenses recorded during the test year
6 ended February 28, 1996.

7 Finally, the CA has used actual employees and wage rates as of
8 August 31, 1996 grown during the attrition year. The Company used
9 outdated 1995 actual employee levels. This difference results in
10 \$307,473 in lower salaries and wages than the Company's salary and
11 wage projection for the attrition year.

12
13 **Q. Please explain the forecasted difference in advertising and sales**
14 **promotion expense amounting to \$1.9 million.**

15 **A.** The CA requested that the Company provide a detailed analysis of the
16 1995 projected advertising and sales promotion expenses in the
17 following categories: Institutional, Conservation, Promotional,
18 Informational and non-regulated Promotional for the sale of
19 appliances. The Company's response was such that amounts
20 projected for each advertising category cannot be determined. Since
21 the Company declined to furnish the breakdown of advertising
22 expenditures, it is not clear if the amount includes advertising that

1 would be included in the rates charged ratepayers. Without such
2 information, there is no possible way to determine if the advertising
3 expense budgeted by the Company is appropriate for setting rates. As
4 with any other expense, the Company is obligated to prove that costs
5 that are recovered in rates are just and reasonable. Since the
6 information is not available, the CA has excluded approximately \$1.9
7 million (\$.8 million in salaries and wages) in advertising and sales
8 promotion expenses. Since the Company failed to support the cost of
9 advertising expense, we have included an amount based on a standard
10 adopted by the Commission. Further, regarding advertising expenses
11 Commission rule 1220-4-5- 45 (Attachment) states, "A utility may
12 not recover from any person other than their shareholders (or other
13 owners) any direct or indirect expenditure for promotional or political
14 advertising. The term 'promotional advertising' means any
15 advertising for the purpose of encouraging any person to select or use
16 gas service or additional gas service or the selection or installation of
17 any appliance or equipment designed to use gas service." We have
18 included an amount equal to .5% of revenues. The CA has applied
19 this threshold to all NARUC Uniform System of Accounts ("USOA")
20 accounts which include advertising and sales promotion expenditures.
21 This standard criteria was set in Commission Docket U-85-7355 for
22 Nashville Gas Company and is consistent with positions taken by the

1 Commission staff in subsequent gas company rate cases, i.e. United
2 Cities Gas Company, Docket #92-02987. Mr. Hal Novak, of the TRA
3 staff and formerly of the Commission staff, recommended in Docket
4 #92-02987, "that the Commission approve its interpretation of the
5 Commission policy by disallowing all advertising and sales
6 promotion expenses that are in excess of .5% of operating revenues."
7 Again, in September 1994, the Commission staff cited the Company
8 in a compliance audit report that "The Company is understating the
9 monthly rate of return that it reports to the Commission" due to
10 excessive advertising expenses which are not in compliance with the
11 Commission Orders. Our case is consistent with the standard as
12 applied in the past.

13
14 **Q. Please explain the forecasted difference in net pension expense of**
15 **\$1.3 million.**

16 **A.** The Company's pension plan is fully funded and no funding is
17 anticipated during the attrition year based on the Company's 1995
18 annual report to their stockholders. Additionally, Company personnel
19 indicated through CA verbal inquiries that there would be no funding
20 during the attrition year. The CA has not recognized any pension
21 expense for the attrition year which is consistent with Federal Income
22 Tax treatment. The Company, however, has unjustly and

unreasonably included approximately \$1.3 million of net pension expense in its filing. The Company's recognition of a \$1.3 million pension expense in fact causes the ratepayer to pay an expense that has already been paid. Finally, the Commission historically recognized only the actual contributions to the pension plan in the cost of service for setting rates for both telephone and other utilities.

Please note the following examples in cases:

Tennessee-American Water Company	U-87-07534	Mar. 1988
Tennessee-American Water Company	89-15388	May 1990
Tennessee-American Water Company	91-05224	Dec. 1991
Tennessee-American Water Company	96-00959	Oct. 1996
Chattanooga Gas Company	U-87-07531	Apr. 1989
Chattanooga Gas Company	91-03765	Apr. 1991
Nashville Gas Company	U-87-07499	Nov. 1987
Nashville Gas Company	89-10491	Nov. 1989
Nashville Gas Company	91-02636	Nov. 1991
Nashville Gas Company	94-01054	Oct. 1994
United Cities Gas Company	89-10017	Nov. 1989
United Cities Gas Company	92-02987	Sep. 1992
Kingsport Power Company	90-05735	Dec. 1990
Kingsport Power Company	92-04425	Nov. 1992
Tellico Telephone Company	91-09061	Feb. 1992
Tennessee Telephone Company	91-09062	Feb. 1992
Concord Telephone Company	91-09063	Feb. 1992

In summary, the Company should not be allowed to recover the \$1.3 million a second time.

1 Q. Please explain the forecasted difference in allocated service
2 company charges of \$2 million.

3 A. The CA has allocated the general and administrative expenses
4 (service company charges) of Piedmont Natural Gas Company
5 ("PNG") based upon the ratio of the number of Nashville Gas
6 customers at the end of 1995 to the total PNG customers. This results
7 in 22.16% of PNG's customers being in Tennessee, therefore,
8 Nashville Gas is allocated 22.16% of PNG's general and
9 administrative expenses. The Company, however, has allocated these
10 expenses based upon the ratio of net plant in Tennessee to PNG's
11 total net plant in service. This method is inappropriate and
12 inconsistent with allocation methods historically used and further, is
13 unjust and unreasonable. Historically, audit procedures have
14 allocated operating expenses based on the number of customers in
15 Tennessee to the total number of customers in all states in which
16 PNG operates. This method was recommended by the Commission
17 Staff in Docket #92-02987. The Company's method for no real
18 reason ignores the distinctive nature of the plant assets in each state
19 as to age, cost and the rate at which the plant is being depreciated and
20 should be rejected. The CA's method of allocation is approximately
21 \$.6 million lower than the Company's allocation amount.
22 Additionally, the Company has included a projection of \$2.4 million

1 in salaries and wages allocated from PNG to Tennessee customers.
2 This amount is \$1.6 million higher than the 1995 amount and \$1.5
3 million higher than the test year ended February 1996, a 200%
4 increase from the test year. Although we requested all supporting
5 workpapers, the Company provided no support for the reasonableness
6 and accuracy of this 200% increase which is unjust and unreasonable.
7 There is no evidence that any change in the Company's operations
8 warrant a \$1.4 million increase for the attrition year. The Company's
9 projection should be rejected.

10
11 **Q. Please explain the forecasted difference in Long-Term Incentive**
12 **Pay plan of \$.6 million.**

13 **A.** The Company has included \$.6 million in Long-Term Incentive Pay
14 ("LTIP") during the attrition year. The Company has defined the
15 LTIP as:

16 "a shareholder-approved Executive Long-Term
17 Incentive Plan for the purpose of promoting the
18 interests of the Company by attracting and
19 retaining in its employment persons of outstanding
20 ability....provides executives and other key
21 employees of the Company greater incentive to
22 make material contributions to the success of the
23 Company by granting them incentive
24 compensation conditioned upon the corporate
25 achievement of financial and other performance
26 objectives."
27

1 Thus, the Company rewards employees if the Company
2 overearns. The Company has defined the performance objective "as
3 being a 5% compounded, average, annual increase in net, real
4 (corrected for inflation) after-tax earnings.... Thus, the targets for
5 the periods 1987 through 1991 and 1989 through 1994 were each
6 established as being a 27.6% (5% per year, compounded) increase in
7 net after-tax earnings." After review of the Company's LTIP, the CA
8 recommends exclusion of this expenditure due to the following: (1)
9 The LTIP is based principally on earnings growth. In fact, the plan
10 encourages the executives to seek earnings growth through rate
11 increases such as this one in order to produce growth in earnings
12 instead of performance gains or improved service. In other words
13 increasing rates to the ratepayers for LTIP expenses results in
14 increased earnings, which in turn increases LTIP in the future, and
15 which also increases revenue requirements from the ratepayers in the
16 future. This circular incentive program rewards the Company for
17 increasing rates and harms customers; (2) All LTIP employees
18 receive the compensation regardless of the individual employee's
19 performance; and (3) There is no measurable benefit to the
20 ratepayers.

1 Q. Have other regulatory commissions rejected the expense resulting
2 from such incentive plans?

3 Yes, earlier this year the Washington Utilities and Transportation
4 Commission ("WUTC") disallowed incentive pay with the following
5 statement²:

6 "Plans which do not tie payments to goals that
7 clearly and directly benefit ratepayers will face
8 disallowance in future proceedings. (Emphasis
9 added.)

10
11 Additionally, the WUTC commented,

12 "....there is a potential tension between quality and
13 earnings. A firm can concentrate on financial
14 elements so heavily that it can lose sight of the
15 importance of providing customer service. In a
16 public utility service, where many customers have
17 no reasonably substitutable alternatives, the
18 Commission must substitute for the competitive
19 market in assuring that customer service remains a
20 priority to the business. Financial goals are at best
21 a very crude way to measure specific efficiencies
22 that employees can accomplish." (Emphasis
23 added)
24

25 Finally, in 1995 the South Carolina Public Service Commission staff
26 excluded over \$.3 million of Piedmont LTIP³ (Attachment). In fact,
27 in that case both the South Carolina Commission and the Company

²WUTC v. U S WEST Communications, Docket No. UT-950200

³ In RE. Piedmont Natural Gas Company, Inc. Docket No. 95-715-G, Accounting Exhibit A-1, Line No. 13.

1 had excluded LTIP amounts in the projected cost of service
2 schedules.

3
4 **Q. Please explain the forecasted difference of General and**
5 **Administrative expenses transferred for capitalization and to**
6 **non-regulated operations in the amount of \$.4 million.**

7 The Company has made an error in their calculation of General and
8 Administrative expenses to be transferred for capitalization and to
9 non-regulated operations in the amount of \$.4 million for the attrition
10 year. This error was noted in detail on pages 21-22 of the TRA
11 staff's compliance audit of October 14, 1996 (Attachment). Further,
12 the Company was cited by the Commission staff for this same error in
13 a previous compliance audit of September 1994. The Company, as of
14 this date, has failed to correct the error. The Company agreed with
15 the TRA staff finding and has stated that it would implement the
16 change at the beginning of the attrition year, November 1, 1996.

17
18 **Q. Please identify the differences regarding other taxes and income**
19 **taxes for Nashville Gas Company in Docket #96-00977.**

20 **A.** The CA Exhibit, Schedule 9 indicates the differences in the
21 forecasted amounts between the CA and the Company. The other
22 taxes projected by the CA are \$.2 million lower than the tax amounts

1 projected by the Company for the attrition year. This \$.2 million
2 difference is due to lower payroll taxes.

3

4 **Q. Please explain why the CA forecasted difference of approximately**
5 **\$.2 million in payroll taxes .**

6 A. \$.163 million of the \$.2 million Company overstatement is associated
7 with the unsubstantiated allocation of salaries and wages from PNG
8 (See p.10-11). The residual \$.037 million is half due to the Company
9 including the Company's portion of payroll tax on the personal use of
10 the Company cars. The other half is attributable to an overstated
11 salary and wage calculation by the Company as discussed previously
12 (See p.6).

13

14 **Q. Please explain the forecasted difference in income taxes.**

15 A. The \$1.9 million difference in the CA and Company's income taxes
16 is due to lower operating expenses projected by the CA (discussed on
17 P. 3) and the difference in capital structure, specifically the cost of
18 debt or interest expense (See testimony of Dr. Steve Brown).

19

20 **Q. Does this conclude your testimony?**

21 A. Yes, it does.

22

STATE OF TENNESSEE

Office of the Attorney General



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September 19, 1997

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Petition of Chattanooga Gas Company to Place into Effect a Revised Natural Gas
Tariff
Docket No. 97-00982

Dear Mr. Waddell

I have enclosed an original and thirteen copies of Direct Testimony of Consumer Advocate Division witness Robert T. Buckner, Senior Regulatory Analyst in the above referenced matter. Copies are being furnished to counsel of record for interested parties.

Sincerely,

A handwritten signature in dark ink, appearing to read "L. Vincent Williams".

L. Vincent Williams
Consumer Advocate

c Counsel of record

22 SEP 19 15 10

Before the

TENNESSEE REGULATORY AUTHORITY

IN RE: PETITION OF CHATTANOOGA GAS COMPANY TO PLACE INTO
EFFECT A REVISED NATURAL GAS TARIFF
DOCKET NO. 97-00982

DIRECT TESTIMONY
of
ROBERT T. BUCKNER

September 19, 1997

1 Q. Please state your name for the record.

2 A. My name is Robert T Buckner ("Terry").

3

4 Q. By whom are you employed and what is your position?

5 A. I am employed by the Consumer Advocate Division ("CA") in the
6 State of Tennessee Attorney General's Office as a Senior Regulatory
7 Analyst.

8

9 Q. How long have you been employed in the utility industry?

10 A. Approximately twenty years. Before my employment with the
11 Attorney General, I was employed with the Tennessee Public Service
12 Commission ("Commission") as a financial analyst for approximately
13 six years. Prior to my employment with the Commission, I was
14 employed by Telephone and Data Systems ("TDS") for eight years
15 and the First Utility District of Knox County for three years.

16

17 Q. What is your educational background and what degrees do you
18 hold?

19 A. I have a Bachelors degree in Business Administration from the
20 University of Tennessee, Knoxville with a major in Accounting. I am
21 also a Tennessee Certified Public Accountant and a member of the
22 American Institute of Certified Public Accountants.

1 Q. Would you briefly describe your responsibilities as a Regulatory
2 Analyst since your employment with the CA?

3 A. I prepared testimony and exhibits as an employee with the
4 Commission before becoming a member of the CA. My
5 responsibilities have not changed significantly since becoming
6 employed with the CA.

7

8 Q. What is the purpose of your testimony before the Tennessee
9 Regulatory Authority ("TRA")?

10 A. The purpose of my testimony is to present the CA's recommended
11 revenue requirement for Docket #97-00982 for Chattanooga Gas
12 Company ("Company"). The CA is recommending a rate reduction
13 of \$1.393 million. A summary of the revenue requirement issues is
14 found in Schedule A of my exhibit. Mr. Dan McCormac will present
15 direct testimony regarding the forecast of revenues. Mr. Archie
16 Hickerson, Director of the CA staff will present direct testimony and
17 exhibits regarding the Company's proposed acquisition adjustment.
18 Dr. Stephen Brown will present direct testimony and exhibits as to
19 the just and reasonable cost of equity. Additionally, I will present my
20 opinion on behalf of the CA as to the appropriate operating expenses
21 for the attrition year October 1, 1997 to September 30, 1998 for the
22 Company. Also, I will present my opinion as to the appropriate

1 calculation of other taxes, income taxes, rate base and depreciation
2 expense for the attrition year.

3

4 **Q. Please identify the issues regarding operating expenses for**
5 **Chattanooga Gas Company in Docket #97-00982?**

6 A. The CA Exhibit, Schedule 10 indicates the differences in the
7 forecasted amounts between the CA and the Company. The operating
8 expenses projected by the CA are \$2.239 million lower than the
9 operating expenses projected by the Company for the attrition year.
10 The issues regarding this \$2.239 million include the following: (1)
11 the CA has excluded \$1.497 million in excessive expense growth due
12 to the allocation of charges from the Company's corporate parent,
13 Atlanta Gas Light ("AGL"); (2) a reduction of \$.227 million in
14 forecasted expenses associated with promotional advertising; (3) a
15 \$.219 million reduction in projected uncollectible expense; (4) a
16 reduction of \$.192 million in expenses primarily due to excessive
17 growth rates; and (5) \$.142 million in rate case expense and
18 miscellaneous income deductions. (This includes \$.038 million of
19 miscellaneous income deductions per CA Exhibit, Schedule 8, Line
20 10). Additionally, a reconciliation of all revenue requirement
21 differences between the CA and the Company is provided in Buckner
22 Exhibit, Schedule A.

1 Q. Please explain your opinion as to the forecasted difference of
2 \$1.497 million in forecasted allocation of AGL expenses of the
3 Company and the CA for the attrition year.

4 A AGL performs most of the management and financial operations of
5 the Company. AGL performs these same operations for its customers
6 in Georgia. As of June 30, 1997, AGL serves nearly 1.37 million
7 customers in Georgia and just over 53,000 in Tennessee, or 3.73% of
8 AGL's total customers. Since AGL personnel perform the same
9 operations for both states, their costs are allocated between the two
10 jurisdictions. The Company has included \$5.227 million of allocated
11 operating expenses from AGL in its forecast for the attrition year.
12 This amount is 5.13% of AGL's forecasted total of \$102 million in
13 expenses subject to allocation and is disproportionate to the number
14 of customers in Chattanooga. In my opinion, the TRA should reject
15 the Company's expense allocation amount because it simply seeks to
16 impose the highest possible costs on Chattanooga consumers instead
17 of just and reasonable costs. The CA has included in its forecast
18 \$3.730 million of allocated operating expenses from AGL, resulting
19 in a difference of \$1.497 million. The total difference in allocation is
20 \$1.497 million in the following three areas: (1) \$1.253 million in
21 allocation based on the current number of customers of the Company
22 to total AGL; (2) \$.151 million in excessive rate of return on net

1 investment; and (3) \$.093 million of allocated AGL expenses that
2 should be charged to non-utility operations rather than regulated
3 ratepayers.

4 First, in my opinion, a change is required as to the result from the
5 allocation methodology proposed by the Company to one based on
6 the percentage of Company customers to the total number of
7 customers served by AGL (3.73%). My opinion is based on several
8 criteria.

9 (A) Financial: AGL's proposed forecast of charges allocated to the
10 Company is nearly 300% higher than the 1996 amount (an increase of
11 \$3.908 million). This increase causes results that are not logical.
12 According to the Company's accounting records, the new allocation
13 methodology was implemented October 1, 1996. While the
14 theoretical multi-component allocation methodology proposed by the
15 Company seems reasonable, the practical end result of the
16 methodology is not reasonable to the ratepayer. Mr. James E. Kissel,
17 who filed direct testimony on behalf of the Company, explains the
18 allocation methodology change. In his testimony, he states the
19 following:

20 "Chattanooga Gas Company is expected to see an
21 increase of approximately \$2.3 million in the total
22 amount being allocated versus the estimated amount to
23 be allocated using the prior method....The new
24 methodology allocates 3.7% of the central services costs

1 to Chattanooga Gas Company "

2
3 As previously mentioned, the Company has forecasted a \$3.908
4 million increase over fiscal year end 1996 (New allocation
5 methodology over old allocation methodology). Also in contrast,
6 AGL forecasts 5.13% of the total costs subject to allocation to be
7 charged to Chattanooga. Mr. Kissel did not testify to the validity of
8 the Company's forecasted allocation amount, nor is there any
9 assurance that AGL is following Mr. Kissel's recommended
10 allocation methodology with precision.

11 Further, as an offset, the Company has reduced its local employee
12 level from an average of 127 in 1996 to an average of 91 for year-to-
13 date May 1997. As a result, the Company realized \$2.267 million in
14 personnel related cost savings. Despite the lower number of
15 employees, the Company's forecast of operations and maintenance
16 expenses does not reflect a decline in expense for the attrition year,
17 but is unjustifiably 15% higher than fiscal year ended September 30,
18 1996 (See Buckner Exhibit, Schedule B). Additionally, the 1996
19 amount is abnormally high because it includes \$2.8 million of one-
20 time employee severance expenses for the Company's restructuring.
21 Further, AGL's 1996 annual report to its shareholders reports that,
22 "Fiscal 1996 was a record earnings year for us." AGL is merely
23 shifting costs previously charged to their Georgia operations to their

1 Tennessee operations. If a rate increase is granted from this issue, the
2 net result is an increase in profit for AGL.

3 (B) Regulatory: In my opinion, the CA's recommended
4 methodology is consistent with the findings of the preliminary draft
5 of the TRA staff compliance audit dated July 29, 1997. It is standard
6 practice for the operating utility companies regulated by the TRA to
7 apply a single percentage allocation formula when allocating
8 corporate charges. A single component allocation eliminates the
9 potential for recovering over or under 100% of its allocated common
10 costs. Also, this practice offers consistent treatment of costs in all
11 jurisdictions, thereby eliminating the potential for cost manipulation
12 between entities by AGL management. The use of a multi-
13 component allocation method is problematic. For example, while
14 using the multi-component method, the actual fiscal year-to-date May
15 1997 charges from AGL to the Company are 4.36% of the total
16 subject to allocation and not AGL's forecast of 5.13%. If the year-to-
17 date factor of 4.36% is applied to AGL's forecasted \$102 million
18 subject to allocation, then the allocated expense is \$.780 million in
19 lower expenses. Also, AGL has reduced its level of employees by
20 over 70 since year end December 31, 1996. Consequently, if the
21 TRA approves the Company's proposed allocated amount for the
22 attrition year, the Company will over recover costs using its current

1 allocation methodology. When the single allocation percent of 3.73%
2 based on number of customers is applied, the allocated charges from
3 AGL are lowered by \$1 253 million or an additional \$ 473 million in
4 lower allocated expenses.

5 Finally, if either the Georgia and the Tennessee regulatory agencies
6 set rates using other than rate base regulation, i.e. incentive
7 regulation, then a temptation exists for the Company to maximize
8 costs in one jurisdiction over another.

9 (C) Practicality: The use of a single allocation component makes a
10 cleaner trail to audit and to verify the accuracy of the charges
11 allocated to both Chattanooga and Georgia customers. A regulatory
12 agency usually has limited time and resources to validate the financial
13 records of the Company. The Company's external auditors rarely, if
14 ever, certify the accuracy of charges between jurisdictions, but
15 usually examine only the Company's operations in total.
16 Consequently, the Company's use of a multi-component allocation
17 method makes the regulator's audit exponentially more difficult. If
18 the multi-components change from month to month, then the
19 regulator is forced to examine every employee's record of time, every
20 paid invoice and every financial accounting change for its veracity.
21 The use of a multi-component allocation method significantly
22 improves the regulator's oversight abilities.

1 (D) Equity By using a single component allocation method, every
2 customer bears equally the charges from corporate's common costs.
3 When dealing with common or joint costs, there is no way to pinpoint
4 the party that actually causes the cost. By definition, common or
5 joint cost is not associated with any particular party. It is a fine
6 notion in attempting to pinpoint every cost causation to a particular
7 customer or a group of customers, but that is not practical. The
8 TRA's goal should be one of providing excellent utility service for
9 every customer at a just and reasonable price. For example, if a main
10 is in need of repair for a particular neighborhood, all the customers of
11 the Company bear the cost in repairing the main, not only the
12 neighborhood. Further, when the Company expands the service, all
13 of the customers bear the cost of the expansion.

14 Secondly, the forecasted AGL allocations for the attrition year
15 include a return component on the net investment used for both
16 jurisdictions (For example, the AGL corporate office building). This
17 return amount is calculated using the Georgia Public Service
18 Commission authorized rate of return of 9.32% in AGL's last rate
19 case. By updating the rate of return to the just and reasonable rates at
20 this time, based upon the opinion of Dr. Stephen Brown, the CA
21 recommends 8.85% as the rate of return using the net investment of
22 April 1997. Based upon that just and reasonable return, the rate of

1 return component is reduced by \$.151 million.

2 Finally, AGL has not allocated any of its corporate office costs to
3 non-utility operations. This finding was made in the previously
4 mentioned TRA staff compliance audit report. The Company has
5 stated in response that it will change its allocation to non-utility
6 operations beginning October 1, 1997. This change results in a
7 reduction in allocated expenses of \$92,503.

8 In summary, it is germane to the TRA and the ratepayer that the
9 allocation of AGL expenses should be based on a consistent
10 methodology. Most importantly, the expenses borne by the ratepayer
11 must be just and reasonable. Although the Company trumpets its
12 efficiency from restructuring, the results are not evident in what AGL
13 is asking the customer to pay. Finally, AGL's proposed rates should
14 not be granted to placate Company management, but only if they are
15 just and reasonable.

16
17 **Q. Please explain the forecasted difference in sales promotion**
18 **expense amounting to \$.227 million.**

19 **A.** The CA has excluded \$.227 million in sales promotion expenses.
20 The sales promotion expense proposed by the CA meets the standard
21 criteria of 5% of revenues in determining the amount of expense to
22 allow for advertising. This standard criteria was set in Tennessee

1 Public Service Commission ("TPSC") Docket U-85-7355 for
2 Nashville Gas Company as a surrogate for actually identifying the
3 advertising expense by category because most of the advertising
4 expense was promotional in nature. This is consistent with positions
5 taken by the Commission Staff in subsequent gas company rate cases
6 i.e. United Cities Gas Company, Docket #92-02987. Further,
7 regarding advertising expenses Commission rule 1220-4-5- 45 states,
8 "A utility may not recover from any person other than their
9 shareholders (or other owners) any direct or indirect expenditure for
10 promotional or political advertising. The term 'promotional
11 advertising' means any advertising for the purpose of encouraging
12 any person to select or use gas service or additional gas service or the
13 selection or installation of any appliance or equipment designed to
14 use gas service."

15 The TPSC found the .5% to be consistent with the rule and
16 departure from the policy is inappropriate under existing legal
17 standards which require the agency to follow existing rules and
18 practices.

19
20 **Q. Please explain the forecasted difference in uncollectible expense**
21 **of \$.219 million.**

22 **A. The CA's uncollectible expense for the attrition year was calculated**

1 based on the Company's most recent seven years and eight months
2 experience of net write-offs. The CA uncollectible expense amount
3 for the attrition year is \$165,968. This amount is \$219,051 lower than
4 the Company's amount of \$385,019 which was based on a 12 month
5 average from March 1996 to February 1997. The Company's
6 selected time period is an aberrant and abnormal time period for
7 forecasting purposes and is more than double the historical amounts
8 for the previous six fiscal years. The Company has not presented
9 substantial and material evidence which shows that the expense will
10 continue at that unusual rate. Further, the Company forecasted
11 amount is not indicative of even their current expense. The Company
12 booked \$14,293 for uncollectible expense in May 1997.

13
14 **Q. Please explain the difference in the forecasted expense growth**
15 **rates of the Company and the CA for the attrition year.**

16 A. The Company has used a compound customer and inflation ("CPI")
17 growth rate of 15.62% for the majority of the operating expense
18 accounts excluding salaries and wages. The Company grew these
19 accounts for the test year, the fiscal year ended September 30, 1996,
20 by 15.62% to arrive at their attrition year amounts. It is generally
21 accepted that CPI overstates inflation. Because use of the CPI
22 overstates inflation, it creates more than a just and reasonable.

1 expense

2 In my opinion and the opinion of most experts the GDP is a better
3 indicator than CPI. The CA used one half of the annual customer
4 growth rate of 4.65% and an annual inflation ("GDP") rate of 2.36%
5 which generates a compound growth rate of 7.25% from the nineteen
6 months ended May 31, 1997 through September 30, 1998. The
7 information used to determine the CA's inflation factor was taken
8 from the publication "Blue Chip Indicators". The difference between
9 GDP and CPI results in \$.057 million in lower operations and
10 maintenance expenses. Also, the CA used a later test period from
11 June 30, 1996 through May 31, 1997. This period is used because it
12 is more indicative of the Company's post-restructuring costs and of
13 their current cost of operation. The annual customer growth rate was
14 based on the Company's projections of customer growth.
15 Additionally, the CA priced out employee's salaries and wages for
16 the attrition year resulting in \$.052 million lower expense.
17 Consequently, it was not necessary to grow salary and wage expense
18 from the test period using an inflation factor. The cumulative effect
19 of the difference in the compound inflation rates, customer growth
20 rates and test period differences amounts to \$.192 million.

1 Q. Please explain the difference in the forecasted rate case expenses
2 and miscellaneous income deductions of the Company and the CA
3 for the attrition year and your opinion on these differences.

4 A. The CA included \$144,500 of Company anticipated costs for this
5 rate filing to be amortized over three years or \$48,167 for the attrition
6 year plus one year's amortization of Docket #95-02116 at \$16,167.
7 The excess expense difference between the CA calculated amount
8 and the Company projection amounts to \$.104 million. The
9 Company has taken the fiscal 1996 year end amount and has
10 increased it for "CPI" inflation and customer growth. The
11 Company's adjustment has no relationship to historic or prospective
12 amortization amounts from rate filings.

13 Finally, the CA disallowed approximately \$37,540 in miscellaneous
14 expenses as proposed by the Company which are not allowed for use
15 in setting rates. In my opinion, the CA position on this item is
16 consistent with previous positions taken by the TRA Staff.

17

18 Q. Please identify the issues and your opinion regarding other taxes
19 and income taxes for Chattanooga Gas Company in Docket #97-
20 00982?

21 A. The CA Exhibit, Schedule 11 indicates the differences in the
22 forecasted amounts between the CA and the Company. In my

1 opinion, the projected other taxes are \$ 401 million lower than the tax
2 amounts projected by the Company for the attrition year. My opinion
3 regarding this \$.401 million includes the following: (1) I exclude
4 approximately \$.207 million in excessive property tax expense; (2) a
5 reduction of \$.151 million in forecasted Tennessee gross receipts tax
6 expense; (3) a reduction of \$26,340 in forecasted Tennessee state
7 franchise tax expense; (4) approximately \$6,800 in lower payroll
8 taxes and the TRA inspection fee; and (5) income taxes per Schedule
9 12 are due to the difference in taxable net operating income.

10
11 **Q. Please explain your opinion as to the forecasted difference in**
12 **other taxes of approximately \$.401 million.**

13 A. The Company has erroneously mixed un-equalized property
14 assessment value with equalized property assessment value in its
15 calculation of average property assessment growth from 1991 through
16 1996. The Company's use of assessment history, beside its inherent
17 error in calculation, does not reflect current trends. I calculated
18 property taxes using the 1996 tax rates and equalized property
19 assessment values which reflects the most recent historical increases
20 (1995-1996). This results in a \$.217 million adjustment to remove
21 the overstated projected property tax expense proposed by the
22 Company.

1 In addition, the Company has used a five year average of effective
2 Tennessee State Gross Receipts Tax rates to calculate the amount of
3 Tennessee Gross Receipts Tax for the attrition period. The
4 Company's use of a five year average does not reflect the current
5 effective tax rate for use in setting rates and consequently overstates
6 the Tennessee Gross Receipts Tax. For example, the Gross Receipts
7 Tax to be paid is offset by the amount of Tennessee Franchise and
8 Excise Tax paid in the prior year. The Excise tax is calculated based
9 on normalized tax depreciation. The use of accelerated tax
10 depreciation reduces the Tennessee excise tax, but conversely
11 increases the Tennessee Gross Receipts Tax. For setting rates, both
12 the Company and the CA have ignored accelerated tax depreciation
13 rates for calculating Tennessee Excise Tax. The Company, however,
14 has used the normalized tax depreciation benefit when calculating its
15 Gross Receipts Tax. The difference in calculated amounts between
16 the Company and the CA amounts to \$.151 million for the attrition
17 year.

18 The Company has included an acquisition adjustment in its
19 calculation of Tennessee State Franchise Tax. This is an
20 inappropriate inclusion for calculating franchise tax expense in
21 setting rates. I excluded this amount resulting in \$26,340 lower
22 franchise tax expense.

1 Additionally, the payroll taxes for the attrition year are overstated
2 by the Company by approximately \$4,141 due to an overstated salary
3 and wage calculation by the Company.

4 Finally, the Company has overstated the TRA inspection fee by
5 \$2,746 primarily due to overstated revenues for the inspection fee
6 period.

7
8. **Q. Please explain the forecasted difference in income taxes.**

9 A. The difference in the CA and Company's income taxes is due to
10 lower operating expenses by the CA and the difference in capital cost,
11 specifically the cost of debt.

12
13 **Q. Please define, "Rate Base."**

14 A. Simply put, Rate Base is the net investment upon which the
15 Company is allowed to earn a just and reasonable rate of return. A
16 summary comparison of the rate base amounts for both the CA and
17 the Company is found in the CA Exhibit, Schedule 3.

18
19 **Q. Please explain your opinion and the forecasted difference in Rate**
20 **Base.**

21 A. The CA Rate Base is \$6.783 million lower than the Company and
22 my opinion relies on the following:

1 Net Acquisition Adjustment - The CA has excluded \$13.356
2 million Acquisition Adjustment and \$4 196 million of Accumulated
3 Amortization of Acquisition Adjustment for a net reduction in rate
4 base of \$9 160 million. As previously mentioned, Mr. Archie
5 Hickerson, Director of the CA will address these amounts in his
6 direct testimony.

7 Working Capital - The CA is \$1.636 million higher than the
8 Company primarily due to an erroneous customer deposit amount by
9 the Company in its forecast. According to the Company, there is a
10 transposition error in their filing of forecasted customer deposits.

11 Net Utility Plant in Service - The CA used a simple average rather
12 than a thirteen month average to develop the two major Rate Base
13 components, Utility Plant and Service and Accumulated
14 Depreciation. This amounts to the CA being a net \$.691 million
15 higher than the Company.

16
17 **Q. How did you calculate depreciation expense for the attrition**
18 **year?**

19 **A.** The average attrition year plant balances were multiplied by the
20 Company proposed depreciation rates. I am not expressing an
21 opinion on the accuracy of the Company's request to reduce the
22 composite depreciation rate from 3.66% to 3.61%. The CA did not

1 have sufficient time nor the resources to investigate the
2 reasonableness of the Company proposed depreciation rates. The
3 calculated result, however, is \$4.811 million in depreciation expense
4 for the attrition year. This amount is \$9,875 lower than Company
5 amount. This amount is due to the CA's exclusion of depreciation
6 expense on Land and Land Rights as proposed by the Company. In
7 my opinion, Land and Land Rights should not be depreciated.
8

9 **Q. Does this conclude your testimony?**

10 **A.** Yes, it does.
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BEFORE THE
TENNESSEE PUBLIC SERVICE COMMISSION

In Re Petition of United Cities Gas Company to Place Into Effect a Revised
 Natural Gas Tariff

Docket No 95-02258

DIRECT TESTIMONY

OF

R TERRY BUCKNER

September 25, 1995

1 Q. Please state your name for the record.

2 A. My name is R. Terry Buckner.

3 Q. By whom are you employed and what is your position?

4 A. I am employed by the Consumer Advocate Division ("CA") in the
5 State of Tennessee Attorney General's Office as a Senior Regulatory
6 Analyst.

7 Q. How long have you been employed in the utility industry?

8 A. Approximately eighteen years. Before my employment with the
9 Attorney General, I was employed with the Tennessee Public Service
10 Commission ("Commission") as a financial analyst for approximately
11 six years. Prior to my employment with the Commission, I was
12 employed by Telephone and Data Systems ("TDS") for eight years
13 and the First Utility District of Knox County for three years.

14 Q. What is your educational background and what degrees do you
15 hold?

16 A. I have a Bachelors degree in Business Administration from the
17 University of Tennessee, Knoxville with a major in Accounting. I am
18 also a Tennessee Certified Public Accountant and a member of the
19 American Institute of Certified Public Accountants.

20 Q. Would you briefly describe your responsibilities as a Regulatory
21 Analyst since your employment with the CA?

22 A. I prepared testimony and exhibits as an employee with the

1 Commission before becoming a member of the CA. My
2 responsibilities have not been altered significantly since my
3 employment change.

4 **Q. What is the purpose of your testimony?**

5 A. The purpose of my testimony is to present information to the
6 Commission on the appropriate operating expenses other than
7 depreciation and salaries and wages for the attrition year December 1,
8 1995 to November 30, 1996 for United Cities Gas Company
9 ("Company"). Additionally, I will present the CA's calculation of
10 other non-payroll taxes and income taxes for the attrition year.

11 **Q. Please identify the issues regarding operating expenses for United**
12 **Cities Gas Company in Docket #95-02258?**

13 A. The CA Exhibit, Schedule 5, indicates the differences in the
14 forecasted amounts between the CA and the Company. The non-
15 payroll operating expenses projected by the CA are \$3.166 million
16 lower than the non-payroll operating expenses projected by the
17 Company for the attrition year. The eight principle issues regarding
18 this \$3.166 million include the following: (1) The CA Exhibit,
19 Schedule 4, Line 11 has included \$1.502 million in annual savings as
20 found in the Management Audit of the Company by The Liberty
21 Consulting Group ("Liberty"). Liberty was employed at the direction
22 of the Commission to conduct the management audit of the Company

1 in Docket #92-02987. The Commission ordered in Docket #92-
2 02987 that the results of the audit be considered in the next rate filing
3 which is this Docket #95-02258. Liberty has completed the audit and
4 has provided the report to the Commission. Liberty representatives
5 will testify as to the validity of the annual savings amount. The CA
6 relied on their expertise in incorporating the identified annual savings
7 in its forecast for the attrition year as found in Liberty's management
8 audit report; (2) The Company has overstated \$.694 million in
9 forecasted non-payroll operating expenses originating from the CA's
10 test period reconciliation; (3) The Company overstated \$.390 million
11 in projected employee health insurance; (4) The CA recommends
12 \$.334 million in disallowed and non-recurring expenses; (5) The CA
13 inflation and customer growth rate used for non-payroll expenses is
14 \$.244 million in higher than the Company for the attrition year; (6)
15 The CA proposes a disallowance of \$.198 million in forecasted sales
16 promotion expense; (7) The Company has improperly included \$.189
17 million of interest on customer deposits with operating expenses.
18 The CA has recognized this item for presentation purposes as interest
19 expense and as a separate line item in the comparative income
20 statement; (8) The CA has disallowed Company adjustments of \$.103
21 million in storage expense, postage expense, and management audit
22 amortization expense.

1 Q. Please explain the \$.694 million difference in the test period non-
2 payroll operating expense amount of the Company and the CA
3 used in forecasting non-payroll expenses for the attrition year.

4 A. The Company has over-allocated non-payroll costs to Tennessee
5 operations for the test year 1994 by \$.694 million. Approximately
6 \$.656 million of this amount is classified in the General and
7 Administrative expenses. The Company has four major divisions of
8 operation and allocation of costs: (1) The Division Corporate Office;
9 (2) The Illinois/Tennessee Division; (3) The Virginia/East Tennessee
10 Division; and (4) The Tennessee Division. Tennessee operations
11 receive an allocation of payroll and non-payroll expenses from each
12 Division for reporting purposes and setting rates. The allocation
13 amounts in the Company's filing are not consistent with the actual
14 test period 1994 Divisional income statements ("R50400") furnished
15 to the CA by the Company. Consequently, the allocation percentages
16 used by the Company in its rate filing to allocate costs to Tennessee
17 are overstated and are not consistent with the actual amounts or the
18 factors used in Commission Docket #92-02987, the last rate increase
19 for the Company.

20 Q. Please explain the forecasted difference in employee health
21 insurance amounting to \$.390 million.

22 A. The Company has proposed an increase of nearly 50% in health

1 insurance expense from 1994 to the attrition year. A review of actual
2 growth has been well below this level of growth. The medical claims
3 furnished to the CA have grown closer to the annual inflation rate of
4 2% to 3% for 1994 over 1993. Additionally, year to date 1995
5 annualized amounts are approximately at the same level as 1994.

6 **Q. Please explain the forecasted difference in disallowed and non-**
7 **recurring amounts of \$.334 million.**

8 A. The Company has included \$.334 million in expenses from the 1994
9 test period which are not valid for setting rates or are non-recurring in
10 nature. These expenses include the following: (1) expenses for Non-
11 competition agreements primarily with Union Gas Company incurred
12 during acquisition of their natural gas systems. These payments in
13 effect represent a premium paid in excess of the book value of the
14 Union Gas Company and are not a cost of providing utility service to
15 Tennessee customers. This position is supported by Liberty. In its
16 management audit report, Liberty agrees that this cost should not be
17 recognized for setting rates (See pages II-45,48). Further, the
18 Commission has historically recommended that these costs be borne
19 by the shareholder of the Company and not the ratepayer; (2)
20 expenses for an equity funding fee were also excluded in the CA's
21 attrition year forecast. Simply put, the Company relies upon the
22 earnings of an affiliated company, Energy Company, in order to issue

1 utility bonds, therefore, justifying a fee. However, the affiliated
2 Energy company generates most of its earnings from captive
3 financing agreements with the Company. The Commission Staff has
4 historically not allowed this expense in setting rates. Additionally,
5 Liberty recommended that this equity funding fee be eliminated (See
6 pages II-44,45); and (3) The CA excluded one-time expenses incurred
7 by the Company in 1994 through a class-action lawsuit alleging price
8 fixing in East Tennessee in the 1980's. In February 1995, the
9 Company reached a settlement agreement with the Tennessee
10 Attorney General in the amount of \$80,000. This settlement was
11 pending the United States District Court's approval according to the
12 Company's audited 1994 annual report to the stockholders. This is
13 not a normal or recurring expense.

14 **Q. Please explain the forecasted difference in expense growth rates**
15 **amounting to \$.244 million.**

16 A. The Company has proposed a growth factor of 6.71% to increase
17 most of its non-payroll operating expenses. The CA used a
18 compound growth factor of 9.81% from the twelve months ended
19 December 31, 1994 to November 30, 1996. The CA used an annual
20 weighted customer growth rate of 2.5% and an inflation rate of
21 2.56%. The information used to determine the CA's inflation factor
22 was taken from the publication *Blue Chip Indicators*. The cumulative

1 effect of the difference in the compound growth rate of non-payroll
2 expense amounts to \$.244 million more than the Company.

3 **Q. Please explain the forecasted difference in sales promotion**
4 **expense amounting to \$.198 million.**

5 A. The CA has excluded \$.198 million in sales promotion expenses. The
6 sales promotion expense proposed by the CA meets the standard
7 criteria of .5% of revenues in determining the amount of expense to
8 allow for advertising. This standard criteria was set in Commission
9 Docket U-85-7355 for Nashville Gas Company and is consistent with
10 positions taken by the Commission Staff in subsequent gas company
11 rate cases i.e. United Cities Gas Company, Docket #92-02987. In
12 addition, Commission rule 1220-4-5- 45 states, "A utility may not
13 recover from any person other than their shareholders (or other
14 owners) any direct or indirect expenditure for promotional or political
15 advertising. The term 'promotional advertising' means any
16 advertising for the purpose of encouraging any person to select or use
17 gas service or additional gas service or the selection or installation of
18 any appliance or equipment designed to use gas service." While this
19 rule prohibits promotional advertising, safety and informational
20 advertising is allowed. In previous years, disagreements have arisen
21 as to the proper classification of advertising expenses. The .5%
22 allowance threshold was adopted in lieu of specifically identifying

1 the type of advertising expense.

2 **Q. Please explain the forecasted difference in storage expense,**
3 **management audit amortization, and postage expense amounting**
4 **to \$103 million.**

5 A. Storage expense amount of \$42,334 is excluded by the CA because
6 the test year amount in the Company's exhibit (See Exhibit 7, Page 1,
7 Line 7, Column 2) does not reconcile to the amount in the Company's
8 corporate division income statement.

9 Also, the CA has amortized the management audit expense over a
10 four year period. A four year period more adequately reflects the
11 potential life of the management audit investment cost. This is
12 consistent with the Commission Staff recommended amortization
13 period as stated in their compliance audit report dated September 13,
14 1995. In the Company's rate filing, an amortization period of three
15 years was used resulting in excess expense for the attrition year of
16 \$29,791.

17 Finally, the Company has included a \$31,137 increase for postage
18 expense. As previously mentioned, the CA has already recognized
19 this increase through the growth factor applied to all non-payroll
20 expenses. (See p. 7, Line 2).

21 **Q. Please identify and explain the issues regarding other taxes and**
22 **income taxes for United Cities Gas Company in Docket #95-**

1 **02258.**

2 A. The CA Exhibit, Schedule 8 indicates the differences in the
3 forecasted amounts between the CA and the Company. Other taxes
4 are a separate tax category for classification purposes and are non-
5 income taxes. The other taxes projected by the CA are a net \$60,000
6 lower than the tax amounts projected by the Company for the attrition
7 year. The issue regarding this \$60,000 include primarily the
8 calculated net differences in gross receipts tax, property tax and
9 franchise tax.

10 Income taxes are higher per Schedule 10 primarily due to the
11 difference in taxable net operating income. However, based on the
12 capital structure of Dr. Brown, the CA has included \$.600 million in
13 additional interest expense in its calculation of income taxes,
14 Schedule 9, Line 15. This inclusion reduces income taxes, but also
15 the CA has included permanent differences, items which are not
16 deductible for income tax purposes, of \$.164 million which increases
17 income taxes. These permanent differences have apparently been
18 excluded by the Company in its tax calculation.

19 **Q. Does this conclude your testimony?**

20 A. Yes, it does.

21

22

1 Q. Please state your name for the record.

2 A. My name is R. Terry Buckner.

3 Q. By whom are you employed and what is your position?

4 A. I am employed by the Consumer Advocate Division ("CA") in the
5 State of Tennessee Attorney General's Office as a Senior Regulatory
6 Analyst.

7 Q. How long have you been employed in the utility industry?

8 A. Approximately eighteen years. Before my employment with the
9 Attorney General, I was employed with the Tennessee Public Service
10 Commission ("Commission") as a financial analyst for approximately
11 six years. Prior to my employment with the Commission, I was
12 employed by Telephone and Data Systems ("TDS") for eight years
13 and the First Utility District of Knox County for three years.

14 Q. What is your educational background and what degrees do you
15 hold?

16 A. I have a Bachelors degree in Business Administration from the
17 University of Tennessee, Knoxville with a major in Accounting. I am
18 also a Tennessee Certified Public Accountant and a member of the
19 American Institute of Certified Public Accountants.

20 Q. Would you briefly describe your responsibilities as a Regulatory
21 Analyst since your employment with the CA?

22 A. I prepared testimony and exhibits as an employee with the

1 Commission before becoming a member of the CA. My
2 responsibilities have not been altered significantly since my
3 employment change.

4 **Q. What is the purpose of your testimony?**

5 A. The purpose of my testimony is to present information to the
6 Commission on the appropriate operating expenses other than
7 depreciation for the attrition year October 1, 1995 to September 30,
8 1996 for Chattanooga Gas Company ("Company"). Additionally, I
9 will present the CA's calculation of other taxes and income taxes for
10 the attrition year.

11 **Q. Please identify the issues regarding operating expenses for**
12 **Chattanooga Gas Company in Docket #95-02116?**

13 A. The CA Exhibit, Schedule 10 indicates the differences in the
14 forecasted amounts between the CA and the Company. The operating
15 expenses projected by the CA are \$1.854 million lower than the
16 operating expenses projected by the Company for the attrition year.
17 The issues regarding this \$1.854 million include the following. (1)
18 the CA has excluded approximately \$.577 million in excessive
19 expense growth and inappropriate expenses for setting rates for the
20 ratepayer; (2) a reduction of \$.398 million in forecasted salaries and
21 wages associated with advertising; (3) a reduction of \$.280 million in
22 forecasted medical insurance; (4) \$.248 million reduction in projected

1 uncollectible expense, sales promotion expense, management audit
2 expense, and miscellaneous expense; (5) \$.194 million in legal and
3 rate case expense; and (6) \$.157 million in payroll clearings.

4 **Q. Please explain the difference in forecasted expense growth of the**
5 **Company and the CA for the attrition year.**

6 A. The Company has used a compound customer and inflation growth
7 rate of 18.06% for the majority of the operating expense accounts
8 excluding salaries and wages. The CA used an annual customer
9 growth rate of 4.65% and an annual inflation rate of 2.56% which
10 generates a compound growth rate of 9.89% from the twelve months
11 ended September 30, 1994 through September 30, 1996. The
12 information used to determine the CA's inflation factor was taken
13 from the publication "Blue Chip Indicators". The annual customer
14 growth rate was based on the Company's projections of customer
15 growth. The cumulative effect of the difference in the compound
16 growth of non salary and wage expense amounts to \$.310 million.

17 The CA's calculation of salaries and wages is approximately \$.220
18 million lower than the Company. This difference is due to
19 overstatement of salaries and wages in the Company's filing when
20 reconciled with the price-out of employee's salaries, the exclusion of
21 one employee, and lower salary increases for management and non-
22 union supervisory personnel. The Company included an employee

1 who is no longer with the organization in its projection of salary and
2 wages. Additionally, the Company projected annual increases of 5%
3 and 4.5% for it's non-union management and supervisory personnel.
4 The CA limited the increase for these employees to a 4% annual
5 increase, the same level agreed to by the union supervisory personnel
6 in year one of their contract.

7 The remaining \$47,000 difference is due to the erroneous exclusion
8 by the Company of flex vacation deduction amounts of
9 approximately \$28,000; and approximately \$19,000 of under-
10 allocated costs to non-regulated operations and capitalization.

11 **Q. Please explain the forecasted difference in sales promotion**
12 **salaries and wages expense amounting to \$.398 million.**

13 A. The CA has excluded \$.398 million in sales promotion salaries and
14 wage expenses. The sales promotion expense proposed by the CA
15 meets the standard criteria of .5% of revenues in determining the
16 amount of expense to allow for advertising. This standard criteria
17 was set in Commission Docket U-85-7355 for Nashville Gas
18 Company and is consistent with positions taken by the Commission
19 Staff in subsequent gas company rate cases i.e. United Cities Gas
20 Company, Docket #92-02987. Further, regarding advertising
21 expenses Commission rule 1220-4-5- 45 states, "A utility may not
22 recover from any person other than their shareholders (or other

1 owners) any direct or indirect expenditure for promotional or political
2 advertising. The term 'promotional advertising' means any
3 advertising for the purpose of encouraging any person to select or use
4 gas service or additional gas service or the selection or installation of
5 any appliance or equipment designed to use gas service."

6 **Q. Please explain the forecasted difference in employee health and**
7 **life insurance expense of \$.280 million.**

8 A. The Company erroneously used the projected 1997 amount for
9 employee insurance expense rather than the appropriate 1996 per
10 Company workpapers. Further, the Company failed to allocate a
11 portion of these expenses to capitalization and non-regulated
12 operations. The correction of these "oversights" amounts to
13 approximately \$.280 million.

14 **Q. Please explain the forecasted difference in uncollectible expense,**
15 **sales promotion expense, and management audit expense**
16 **accumulating to \$.248 million.**

17 A. The CA's uncollectible expense for the attrition year was calculated
18 based on the most recent five year history of net write-offs. The CA
19 amount is approximately \$65,000 lower than the Company's amount
20 which excludes an abnormally high recovery amount for 1994, but
21 fails to exclude the abnormally high write-off as well. The CA
22 amount reflects both exclusions.

1 The CA has excluded \$90,226 in additional Company proposed sales
2 promotion expenses. As previously discussed, the sales promotion
3 expense proposed by the CA meets the standard criteria of .5% of
4 revenues in determining the amount of expense to allow for
5 advertising. This standard criteria was set in Commission Docket U-
6 85-7355 for Nashville Gas Company and is consistent with positions
7 taken by the Commission Staff in subsequent gas company rate cases
8 i.e. United Cities Gas Company, Docket #92-02987.

9 Also, the CA has amortized the management audit expense over a
10 four year period. This is consistent with the Commission Staff
11 recommended amortization period as stated in their compliance audit
12 report dated August 28, 1995. In it's rate filing, the Company
13 amortized the management audit expense over a two year period
14 resulting in excess expense of \$49,347.

15 Finally, the CA disallowed approximately \$42,000 in miscellaneous
16 expenses as proposed by the Company which are not allowed for use
17 in setting rates. The CA position on this item is consistent with
18 previous positions taken by the Commission Staff.

19 **Q. Please explain the forecasted difference in legal and rate case**
20 **expense of \$.194 million.**

21 **A.** The Company included legal costs for Federal Regulatory Energy
22 Commission ("FERC") orders incurred in or prior to the test year and

1 have no basis for inclusion in the attrition year. The CA included
2 \$48,500 of anticipated costs for this rate filing to be amortized over
3 three years or \$16,167 for the attrition year. The excess expense
4 difference between the CA calculated amount and the Company
5 projection amounts to \$.194 million.

6 **Q. Please explain the forecasted difference in payroll clearings of**
7 **\$.157 million.**

8 A. The Company has included in its calculation of non-salary and
9 wage expenses, \$.157 million in payroll clearing. The Company
10 calculated its attrition year salaries and wages expense including
11 amounts charged to clearing accounts. Some employees charge their
12 work time to a clearing account. A portion of the clearing account
13 amount is redistributed to expense accounts. The redistributing or
14 clearing process allocates payroll charged to clearing accounts to an
15 expense account based on salaries and wages charged directly to
16 expense accounts. However, through the Company's accounting
17 processes, the payroll clearing amount is recognized as non-payroll
18 dollars. The Company has in effect double-counted the \$.157 million
19 payroll clearing dollars by including them in their salaries and wages
20 expense calculation and also in their calculation of non-salary and
21 wage expenses.

22

1 Q. Please identify the issues regarding other taxes and income taxes
2 for Chattanooga Gas Company in Docket #95-02116?

3 A. The CA Exhibit, Schedule 11 indicates the differences in the
4 forecasted amounts between the CA and the Company. The other
5 taxes projected by the CA are \$.400 million lower than the tax
6 amounts projected by the Company for the attrition year. The issues
7 regarding this \$.400 million include the following: (1) the CA has
8 excluded approximately \$.200 million in excessive property tax
9 expense; (2) a reduction of \$.106 million in forecasted Tennessee
10 gross receipts tax expense; (3) a reduction of \$45,550 in forecasted
11 Tennessee state franchise tax expense; (4) approximately \$30,000 in
12 lower payroll taxes; and (5) income taxes per Schedule 13 which are
13 primarily due to the difference in taxable net operating income.

14 Q. Please explain the forecasted difference in other taxes of
15 approximately \$.400 million.

16 A. The Company has assumed a significant property tax rate change for
17 Hamilton County during the attrition year. There is no evidence to
18 support this rate change. Further, the composite tax rate for the
19 Company has not changed significantly over the last three years. The
20 CA has calculated property taxes using the 1994 tax rates and
21 property assessment values which reflects recent historical increases.
22 This results in \$.200 million in overstated projected property tax

1 expense by the Company.

2 The Company has used a five year average of effective Tennessee
3 State Gross Receipts Tax rates to calculate the amount of Tennessee
4 Gross Receipts Tax for the attrition period. The effective tax rate has
5 declined by 20% over the last five years. The Company's use of a
6 five year average does not reflect the current effective tax rate and
7 consequently overstates the Tennessee Gross Receipts Tax. The CA
8 has used an average of actual and projected gross receipts for the
9 attrition year at the actual tax rate less 1994 estimated franchise and
10 excise taxes. The difference in calculated amounts between the
11 Company and the Staff amounts to \$.107 million for the attrition
12 year.

13 The Company has included an acquisition adjustment in its
14 calculation of Tennessee State Franchise Tax. This is an
15 inappropriate inclusion for calculating franchise tax expense in
16 setting rates. The CA has excluded this amount resulting in \$45,550
17 lower franchise tax expense.

18 Additionally, the payroll taxes for the attrition year are overstated by
19 approximately \$30,000 due to an overstated salary and wage
20 calculation by the Company.

1 Q. Please explain the forecasted difference in income taxes.

2 A. The difference in the CA and Company's income taxes is due to
3 lower operating expenses by the CA and the difference in capital
4 structure, specifically the cost of debt.

5 Q. Does this conclude your testimony?

6 A. Yes, it does.

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