

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION  
NASHVILLE, TENNESSEE  
February 23, 1996

IN RE: APPLICATION OF BELL SOUTH TELECOMMUNICATIONS, INC. FOR A  
PRICE REGULATION PLAN

DOCKET NO. 95-02614

ORDER

This matter is before the Commission upon the petition of BellSouth Telecommunications, Inc. (Bell) that the Commission stay the proposed rate reductions reflected in its January 23, 1996 Order to implement price regulation.

Bell's motion was filed with the Commission on January 30. The first regularly-scheduled public meeting of the Commission was set for February 20. This matter was placed on the Commission's Conference Agenda for deliberation and decision and notice was sent to all interested parties on February 15. On the morning of February 20, the Commission received a copy of Bell's petition for review and motion for stay filed in the Court of Appeals.

At the Commission Conference on February 20, prior to taking up the motion as originally planned, the question was raised regarding the Commission's jurisdiction to rule on the stay. In a previous decision, the Court of Appeals had admonished the Commission for taking up any matters pertaining to a case where a petition for review was filed and a motion for stay was ordered sua sponte. The Commission, out of an abundance of caution, then voted unanimously to prepare a motion to the Court of Appeals asking that the case be remanded to the Commission for the sole purpose of ruling on Bell's motion to stay.

Tennessee law permits a party to submit to the agency a petition for stay of effectiveness of an initial or final order within seven (7) days after its entry and authorizes the agency to take action on the stay, either before or after the effective date of the initial or final order. T.C.A. 4-5-316.

The Uniform Administrative Procedures Act provides for judicial review of a contested case proceeding at T.C.A. 4-5-322. With regard to a stay of agency proceedings, the statute reads in part...

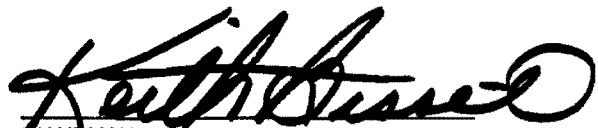
(c) ...The agency may grant, or the reviewing court may order, a stay upon appropriate terms, but if it is shown to the satisfaction of the reviewing court, in a hearing which shall be held within ten (10) days of a request for hearing by either party, that any party or the public at large may suffer injury by reason of the granting of a stay, then no stay shall be granted until good and sufficient bond, in an amount fixed and approved by the court, shall be given by the petitioner conditioned to indemnify the other persons who might be so injured and if no bond amount is sufficient, the stay shall be denied. The reviewing court shall not consider a stay unless notice has been given to the attorney general and reporter; nor shall the reviewing court consider a stay unless the petitioner has previously sought a stay from the agency or demonstrates that an agency ruling on a stay application cannot be obtained within a reasonable time.


The Commission believes that its unique expertise over telecommunications issues make it incumbent upon the Court of Appeals to grant the Commission the power to consider and rule on whether Bell has met the requirements for the granting of a stay.

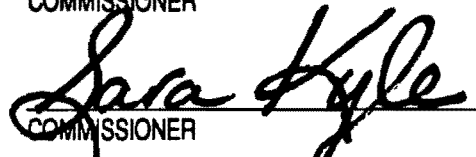
IT IS THEREFORE ORDERED:

That a motion to remand the case of BellSouth Telecommunication, Inc. v. Tennessee Public Service Commission, Court of Appeal No. 01A01-9602-BC-00066, be filed with the Court of Appeals; and

That the motion reflect the Commission's request that remand be granted for the sole purpose of allowing the Commission to rule on the motion for stay filed in Commission Docket No. 95-02614.

  
CHAIRMAN

  
COMMISSIONER

  
COMMISSIONER

ATTEST BY:

  
EXECUTIVE DIRECTOR