

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 4, 2001

IN RE:

ALL TELEPHONE COMPANIES TARIFF)	
FILINGS REGARDING RECLASSIFICATION)	
OF PAY TELEPHONE SERVICE AS REQUIRED)	DOCKET NO.
BY FEDERAL COMMUNICATIONS COMMISSION)	97-00409
(FCC) DOCKET 96-128)	

ORDER GRANTING *MOTION TO FILE REPLY BRIEF* AND
OVERRULING OBJECTIONS TO AUTHORITY DATA REQUESTS

This matter came before the Tennessee Regulatory Authority ("Authority") at the regularly scheduled Authority Conference held on November 21, 2000 to rule on both the *Motion to File Reply Brief* filed by the Tennessee Payphone Owners Association ("TPOA") on October 26, 2000 and on the objections submitted by BellSouth Telecommunications, Inc. ("BellSouth") in response to the Authority's data requests issued on October 27, 2000.

The Authority heard oral arguments in the above styled case on October 25, 2000. During the oral arguments as well as at previous Pre-Hearing Conferences, the Authority reserved the right to issue data requests following the presentation of oral arguments.¹ On

¹ During a Pre-Hearing Conference held on October 10, 2000, the Pre-Hearing Officer explicitly reserved the right of the Authority to issue data requests. *See Transcript of Proceedings*, p. 19 (Pre-Hearing Conference October 10, 2000). The Pre-Hearing Officer announced this reservation again during a second Pre-Hearing Conference held on October 24, 2000. *See Transcript of Proceedings*, p. 9 (Pre-Hearing Conference October 24, 2000). Finally, during oral arguments, the Consumer Advocate, Pre-Hearing Officer, and staff representative, Joe Werner, acknowledged that the Authority may issue data requests following the presentation of oral arguments. *See Transcript of Proceedings*, p. 2, 43, 55, 77 (Oral Arguments October 25, 2000). None of the parties objected to the Authority issuing data requests after oral argument, although BellSouth stated that it could not determine whether BellSouth Public Communications, Inc. would object to the content of the requests. *See Transcript of Proceedings*, p. 55 (Oral Arguments October 25, 2000).

October 27, 2000, the Authority issued data requests to BellSouth, United Telephone Southeast, Inc. ("UTSE"), Citizens Telecommunications Company of Tennessee, and Citizens Telecommunications Company of the Volunteer State (collectively "Citizens"). BellSouth and UTSE filed their responses to the data requests on November 8, 2000. Citizens filed its responses on November 14, 2000. In response to data requests numbers one and two, BellSouth stated:

BellSouth objects to this data request. The subject matter of this docket has devolved to one question: Do the PTAS and Smartline® rates charged by BellSouth Telecommunications meet the FCC's "new services test?" The audited (or unaudited) financial statements of BellSouth Public Communications, a subsidiary of BellSouth Telecommunications have absolutely no relevance to the issue remaining in this docket.

Moreover, the data is highly proprietary, and the direct competitors of BellSouth Public Communications in Tennessee are the members of the Tennessee Payphone Owners Association ("TPOA"). Nor could the data requested by the Staff even be used by the TPOA in this docket, as there is no further argument or briefing contemplated by the procedural schedule.

Nevertheless, and without waiving the foregoing objections, BellSouth is willing to make the requested information available for review (to the extent the requested information exists) by the Tennessee Regulatory Authority Staff pursuant to an appropriate proprietary agreement at a mutually convenient time and location.

During the October 25th oral arguments, the TPOA also orally moved for an award of prejudgment interest. The Directors allowed the opposing parties to respond and ultimately requested that the TPOA file a written motion to ensure that the request was clearly stated and properly memorialized. The TPOA complied with the Authority's request and filed its *Motion for Prejudgment Interest* on October 26, 2000 and *Memorandum of Law in Support of Motion for Prejudgment Interest* on October 31, 2000. In its motion and memorandum, the TPOA argued that it was entitled to prejudgment interest pursuant to Tenn. Code Ann. § 47-14-123. Tennessee Consumers, represented by the Consumer Advocate and Protection Division of the Office of the

Attorney General and Reporter (“Consumer Advocate”), filed a memorandum of law in support of the motion on November 3, 2000. Also on November 3rd, BellSouth and UTSE filed their responses in opposition to the motion. Both parties contended that the Authority lacks jurisdiction to award prejudgment interest pursuant to Tenn. Code Ann. § 47-14-123.

On November 12, 2000, the TPOA filed a *Motion to File a Reply Brief* along with the brief. The TPOA stated that it had not addressed the issue of jurisdiction in either its motion or memorandum and requested that it be provided an opportunity to do so.

Findings and Conclusions

Based on the data requests and BellSouth’s objections thereto, the Authority finds that BellSouth’s objections to data requests numbers one and two are without merit. Despite BellSouth’s contention that there is only one issue remaining in this docket, there are other issues the Authority must address when deliberating the merits of this docket. The financial statements of the three ILECs’ payphone subsidiaries or operations are relevant to these issues because such information may contain evidence of predatory pricing or price squeezing practices. For these reasons, the Directors voted unanimously to overrule BellSouth’s objections to the Authority’s data requests.

Based on the motion and arguments of the parties, the Authority finds that the TPOA should be allowed to address the jurisdiction issue raised in BellSouth’s and UTSE’s responses and, as the movant, the TPOA should have the final opportunity to file a reply to the opposing parties’ arguments. Therefore, the Directors voted unanimously to grant the TPOA’s *Motion to File a Reply Brief*.

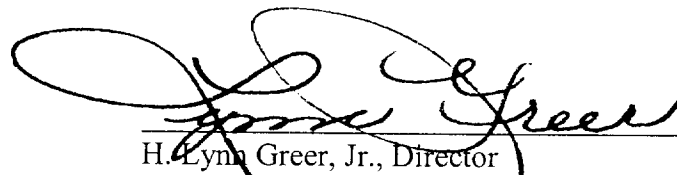
IT IS THEREFORE ORDERED THAT:

1. The objections submitted by BellSouth Telecommunications, Inc. in response to the Authority’s data requests issued on October 27, 2000 are overruled.

2. The *Motion to File Reply Brief* filed by the Tennessee Payphone Owners Association on October 26, 2000 is granted.

3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary