

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

February 23, 2001

IN RE:

PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.  
TO CONVEY A CONTESTED CASE TO ESTABLISH  
"PERMANENT PRICES" FOR INTERCONNECTION  
AND UNBUNDLED NETWORK ELEMENTS

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DOCKET NO.  
97-01262

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ORDER REFLECTING ACTION TAKEN DURING  
FEBRUARY 22, 2001 PROCEEDING

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This Order memorializes the action of the Presiding Officer taken during a proceeding held on February 22, 2001. This matter came before the Presiding Officer as a result of discussions with the Directors at the February 21, 2000 Authority Conference relative to whether BellSouth Telecommunications, Inc. ("BellSouth") had complied with the December 19, 2000 ruling of the Tennessee Regulatory Authority ("Authority" or "TRA") and the *Motion for Enforcement of TRA Order* ("Motion") filed by the Southeastern Competitive Carriers Association ("SECCA") on February 20, 2001. On page 1 of this Motion, SECCA requests that the Authority

take immediate action to enforce the agency's decision announced on December 19, 2000. On that date, the Directors issued a decision requiring BellSouth to submit final rates, terms and conditions for interconnection services and unbundled network elements ("UNEs") and to "file tariffs . . . reflecting these decisions and previous orders in this docket and containing the UNE rates approved by the Authority, as well as the terms and conditions applicable for each UNE." Tr. at 36 (emphasis added)

On January 18, 2001, BellSouth--instead of filing tariffs--submitted the company's current standard interconnection agreement containing the revised UNE rates. In a document styled, Filing in Response to Action Taken at December 19, 2000 Director's Conference, BellSouth stated that "a traditional

tariff could be confusing, would be difficult for the Authority and BellSouth to administer, and is unnecessary.”

Because BellSouth refused to obey the agency’s order, there is no tariff now in effect containing the UNE rates approved by the Authority . . . .

The premise of SECCA’s Motion was first addressed under “Miscellaneous Business” at the regularly scheduled Authority Conference of February 21, 2001. In response to certain questions of the Directors relative to why a tariff had not yet been filed, BellSouth contended that its January 18, 2001 *Filing in Response to Action Taken at December 19, 2000 Director’s Conference* was filed in lieu of a tariff and that the Authority’s December 19th directives needed clarification as to whether the filing of a tariff was specifically required.<sup>1</sup> The Directors recommended that BellSouth meet with the Authority Staff relative to the alleged need for “clarification.” Thereafter, the Presiding Officer obtained SECCA’s and BellSouth’s agreement to convene a proceeding on February 22, 2001 at 1:00 p.m. if the parties could not resolve their complaints during the meeting with Authority Staff. The Directors appointed Director H. Lynn Greer to preside over the proceeding. After the informal meeting with Authority Staff proved to be unproductive, the Presiding Officer confirmed the setting of the previously scheduled proceeding, referred to in the Notice of February 21, 2001 as a “Pre-Hearing Conference.”

#### **Proceeding of February 22, 2001**

Director H. Lynn Greer, Jr. presided over at the February 22, 2001 proceeding.

Appearances were entered as follows:

BellSouth Telecommunications, Inc. - **Guy M. Hicks, Esq.**, 333 Commerce Street, Suite 2101, Nashville, TN 37201-3300; and telephonically, **Michael Twomey, Esq.**, 675 West Peach Street, 4300 Suite, Atlanta, GA 30375-0001;

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<sup>1</sup> BellSouth’s filing included three attachments, which contained the rates and terms and conditions it believed to comply with the December 19<sup>th</sup> rulings. Due to errors, BellSouth corrected this filing on January 31, 2001 and February 12, 2001.

SECCA - **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union Street, No. 1600, P.O. Box 198062, Nashville, TN 37219-8062;

Consumer Advocate and Protection Division of the Office of the Attorney General - **Vance Broemel, Assistant Attorney General**, Cordell Hull Building, Second Floor, 425 Fifth Avenue North, Nashville, TN 37243;

**Authority Staff** - Joseph Werner, Telecommunications Division, 450 James Robertson Parkway, Nashville, TN 37243-0505.

### **SECCA's Motion**

During the proceeding, the parties' arguments molded the following issues: 1) availability of the rates; 2) effective date of the rates; 3) actual bill date of the rates; and 4) filing of a compliant tariff. In response to SECCA's contention that BellSouth did not make the rates available to at least one CLEC, BellSouth stated that "it is BellSouth's position that those rates are available to CLECs and should be available immediately,"<sup>2</sup> but BellSouth also stated that "[i]f a CLEC just wants to sit back and keep the old rates, we're -- that's -- we're going to let that happen."<sup>3</sup> BellSouth's position on "availability" presupposes the existence of an interconnection agreement. Rather than buying UNEs "out of the tariff" as SECCA proposes, BellSouth counters that CLECs will be able to buy UNEs "at the price set forth in the tariff," but will be required to amend their interconnection agreements to get that price. If a CLEC does not have an interconnection agreement, then BellSouth and the CLEC will have to begin negotiations and the resulting interconnection agreement approved before the CLEC can obtain the rates.

While BellSouth argues that there is essentially no difference in the time required to implement a billing change dealing with a tariff as opposed to a negotiated contract amendment, SECCA points out the practical difference. The difference according to SECCA is that an amendment to an interconnection agreement must be approved by the Authority after filing,

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<sup>2</sup> Transcript of Proceedings, February 22, 2001, p. 3.

<sup>3</sup> *Id.* at 11.

whereas a published, public tariff would already be in effect and would not need further confirmation by the Authority.

BellSouth explained that many of the CLECs have contracts that specify that existing rates are subject to true up, in which case the effective date of the rates, in terms of rate impact, is as specified in the contract.<sup>4</sup> The following interchange from the proceeding is illustrative of BellSouth's position on the effective date:

Mr. Twomey [BellSouth]: . . . those rates would be effective as of the date that the TRA ordered these rates.

Mr. Werner [Authority Staff]: And that's BellSouth's official position -- right? -- on the record -- that they will be available?

Mr. Twomey: Yes, they are -- they are available and they'll be effective at least back to December 19th and perhaps earlier if they have a -- if it is a true up to an existing rate . . . .<sup>5</sup>

SECCA also questioned BellSouth as to whether a CLEC would be billed at the old rate or the new rate during the approval process. Although BellSouth declared that the new rate would be effective back to December 19, 2000, no assurance was made as to when the new rate would replace the old rate on a CLEC's monthly bill.

### **Tariff**

Next discussed was BellSouth's failure to file a tariff as required by the Authority's oral ruling of December 19, 2000. Although continuing to argue that a tariff filing should not be necessary, BellSouth acknowledged the Authority's jurisdiction and decision and offered to file a tariff on March 16th -- an offer that was not accepted by the Presiding Officer.

During the discussions of the tariff filing, the parties raised certain issues related to the requirements of the Federal Telecommunications Act of 1996 as to interconnection agreements and amendments thereto. SECCA agreed that an interconnection agreement was required to

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<sup>4</sup> *Id.* at 10.

<sup>5</sup> *Id.* at 29.

interconnect with BellSouth and purchase UNEs; however, it disagreed with BellSouth as to whether a CLEC with an interconnection agreement can order a certain element out of a tariff without going through the amendment process. SECCA acknowledged that this was a legal argument and was not germane to the immediate issue. The Presiding Officer deferred discussion of that issue as well as certain other issues that surfaced during this proceeding to a more appropriate forum.

At the conclusion of the discussions, SECCA renewed its Motion that BellSouth should have filed a tariff to comply with the Authority's December 19<sup>th</sup> directives and, regardless of when BellSouth files its tariff, the rates should be in effect and available to any CLEC by the submission of a simple document. BellSouth countered that the rates are currently available to all CLECs, provided that the simple document submitted is an amendment to its interconnection agreement.

### **Findings and Conclusions**

The new rates adopted by the Authority on December 19, 2000, which were included in BellSouth's January 18, 2001 filing and were amended by BellSouth's corrected submissions of January 31 and February 12, 2001, are effective as of December 19, 2000.

The Presiding Officer finds that the filing of a tariff is necessary because such allows CLECs to buy off the tariff with a certain effective date. Furthermore, a tariff on file allows CLECs to review those rates the Authority has determined to be cost-based and compliant with federal and state law. A tariff on file also assures the non-discriminatory availability of cost-based rates to all CLECs.

The Presiding Officer finds that BellSouth's tariff is overdue, per the December 19, 2000 directive of the Authority and shall be filed no later than **12:00 Noon on Friday, March 2, 2001.**

Failure to comply with this deadline may result in further action by the Authority including, but not limited to, sanctions imposed from the original date the tariff was due.

The Presiding Officer finds that BellSouth has agreed to make the December 19<sup>th</sup> rates available to any requesting CLEC with an interconnection agreement through a simple amendment process.<sup>6</sup> Given BellSouth's offer to make permanent rates effective December 19, 2000 and the above directive that BellSouth file its tariff on March 2, 2001, the Presiding Officer concludes that no further action needs to be taken at this time on SECCA's Motion.

**IT IS THEREFORE ORDERED THAT:**

1. The new rates adopted by the Authority on December 19, 2000, which were included in BellSouth Telecommunications, Inc.'s January 18, 2001 filing and were amended by BellSouth Telecommunication, Inc.'s corrected submissions of January 31 and February 12, 2001, are effective as of **December 19, 2000**;

2. The tariff of BellSouth Telecommunications, Inc. is overdue, per the December 19, 2000 directive of the Authority and shall be filed no later than **12:00 Noon on Friday, March 2, 2001**. Failure to comply with this deadline may result in further action by the Authority including, but not limited to, sanctions imposed from the original date the tariff was due;

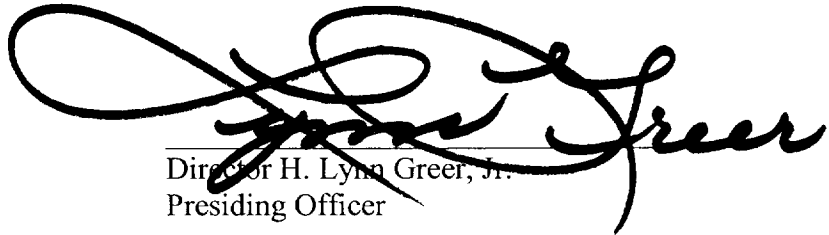
3. The Southeastern Competitive Carriers Association's *Motion for Enforcement of TRA Order* is held in abeyance;

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

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<sup>6</sup> *Id.* at 29 and 36.

5. Any party aggrieved by this Order may file a Petition for Appeal with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-315(b) within fifteen (15) days after entry of this Order.



Director H. Lynn Greer, Jr.  
Presiding Officer

ATTEST:



K. David Waddell, Executive Secretary