

COPY**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT****NASHVILLE, TENNESSEE****IN RE:**

**APPLICATION OF BELL SOUTH BSE,
 INC. FOR A CERTIFICATE OF
 CONVENIENCE AND NECESSITY TO
 PROVIDE INTRASTATE
 TELECOMMUNICATIONS SERVICE**

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DOCKET NO. 97-07505

**ORDER APPROVING REPORT AND RECOMMENDATIONS OF THE HEARING
 OFFICER FROM DECEMBER 29, 1997, PRE-HEARING CONFERENCE**

This matter came before the Tennessee Regulatory Authority ("Authority") upon the Report and Recommendations of the Hearing Officer from the Pre-Hearing Conference Held December 29, 1997 ("Report and Recommendations"). The Authority considered the Report and Recommendations at a regularly scheduled Authority Conference held on February 17, 1998.

Background

On October 30, 1997, BellSouth BSE, Inc. ("BSE") filed an application for a Certificate of Public Convenience and Necessity ("CCN") to become a competing telecommunications service provider as defined in Tenn. Code Ann. § 65-4-101(e) and Tenn. Code Ann. § 65-4-201. AT&T Communications of the South Central States, Inc. ("AT&T") filed a Petition on October 31, 1997, requesting intervention in this proceeding. On November 12, 1997, MCI Telecommunications Corporation ("MCI") and MCIMetro Access Transmission Services, Inc. ("MCIMetro") filed a petition for leave to

intervene in this proceeding. A Notice of Hearing was issued by the Authority on November 13, 1997, setting a Hearing on BSE's application for December 17, 1997. On November 18, 1997, counsel for BSE sent a letter to the Authority stating that BSE was agreeing to waive the statutory sixty (60) day time period for consideration of the application under Tenn. Code Ann. § 65-4-201(c).

On December 2, 1997, at a regularly scheduled Authority Conference, the Authority acknowledged receipt of BSE's letter and directed that a Pre-Hearing Conference be convened in this matter. The Authority appointed General Counsel Dennis P. McNamee, or his designee, to serve as Hearing Officer to preside over a Pre-Hearing Conference. The Authority also granted the petitions for intervention filed by AT&T, MCI, and MCIMetro. On December 5, 1997, the American Communications Services, Inc. ("ACSI") and NEXTLINK, Tennessee ("NEXTLINK") filed petitions for intervention. On December 16, 1997, the Communications Workers of America AFL-CIO ("CWA") filed its petition for leave to intervene.

On December 29, 1997, Hearing Officer Dennis McNamee convened a Pre-Hearing Conference for the stated purposes of: (1) considering interventions; (2) determining a statement of issues; (3) obtaining admissions of fact and documents which would avoid unnecessary proof; (4) limiting expert witnesses, if appropriate; and (5) establishing a discovery schedule and Hearing date. At that Conference, the Hearing Officer granted the petitions for intervention filed by ACSI, NEXTLINK, and the CWA. The Hearing Officer also established a procedural schedule and consolidated the issues for consideration at Hearing. The Report and Recommendations was filed on February 4, 1998. An Order

granting the interventions was entered by the Hearing Officer on February 4, 1998. A copy of that Order was attached to and incorporated in the Report and Recommendations.

The Authority considered the Report and Recommendations at its February 17, 1998, Conference. The Directors voted unanimously to approve the Report and Recommendations.

IT IS THEREFORE ORDERED THAT:

1. The Report and Recommendations filed on February 4, 1998, is hereby approved. A copy of the Report and Recommendations is attached to this Order as Exhibit A and the provisions of that Report and Recommendations are incorporated as if fully rewritten herein.
2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from the date of this Order.
3. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle District, within sixty (60) days from the date of this Order.

CHAIRMAN

DIRECTOR

ATTEST:

DIRECTOR

EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

'98 FEB 4 PM 2 33

**IN RE: APPLICATION OF)
BELLSOUTH BSE, INC., FOR A)
CERTIFICATE OF CONVENIENCE) DOCKET NO.: 97-07505
AND NECESSITY TO PROVIDE)
INTRASTATE)
TELECOMMUNICATIONS SERVICE)**

**REPORT AND RECOMMENDATIONS OF THE HEARING OFFICER FROM THE PRE-
HEARING CONFERENCE HELD DECEMBER 29, 1997**

This matter is before the Tennessee Regulatory Authority ("Authority") for the presentation of the Report and Recommendations of the Hearing Officer from the Pre-Hearing Conference held December 29, 1997. General Counsel, Dennis P. McNamee, presided as Hearing Officer.

I. Background

On October 30, 1997, the Petitioner, BellSouth BSE, Inc. ("Applicant") applied to the Authority for a Certificate of Public Convenience and Necessity ("CCN") to become a competing telecommunications service provider as defined in Tenn. Code Ann. § 65-4-101(e) and Tenn. Code Ann. § 65-4-201. According to its Application, the Applicant is seeking to provide local exchange services throughout Tennessee with the potential to augment future service offerings by adding new capabilities as they become available from the Incumbent Local Exchange Carriers. The Applicant initially plans to operate as a reseller of services, but may later become a facilities-based local exchange provider.

On October 31, 1997, AT&T Communications of the South Central States, Inc. filed a Petition requesting intervention in this proceeding. On November 12, 1997, MCI Telecommunications Corporation also filed a petition requesting intervention in this proceeding. On November 13, 1997, the Authority issued a Notice of Hearing, scheduling the Hearing on December 17, 1997. On November 18, 1997, the Authority received a letter from counsel for the Applicant that waived the statutory sixty (60) day Hearing requirement under Tenn. Code Ann. § 65-4-201. In that letter the Applicant agreed to an extension of time for the Hearing at the convenience of the Authority. On December 2, 1997, the Authority, at a regularly scheduled Directors' Conference, granted the interventions of both AT&T Communications of the South Central States, Inc. and MCI Telecommunications Corporation. The Authority also appointed Dennis P. McNamee, the General Counsel, or his designee, to serve as Hearing Officer for this case to refine the issues and to set a procedural schedule at the Pre-Hearing Conference.

The American Communications Services, Inc. and NEXTLINK, Tennessee filed for intervention on December 5, 1997. On December 16, 1997, the Communications Workers of America AFL-CIO filed for leave to intervene.

The Pre-Hearing Conference in this proceeding was held on December 29, 1997, at 10:30 A.M. for the limited purposes of: (1) considering interventions; (2) determining a statement of issues; (3) obtaining admissions of fact and documents which will avoid unnecessary proof; (4) limiting expert witnesses, if appropriate; and (5) establishing a discovery schedule and Hearing date. The Pre-Hearing Conference was conducted pursuant to Tenn. Code, Ann. § 4-5-306. The following appearances were entered in the proceeding:

Guilford F. Thornton, Jr., Esq., Stokes and Bartholomew, 424 Church Street, Nashville, TN 37219, for BellSouth BSE, Inc., and **Harry Lightsey, Esq.**, 227 Paces Ferry Road, Atlanta, GA 30339, General Counsel, BellSouth BSE, Inc.

Henry Walker, Esq., Boulton, Cummings, Conners & Berry, P.O. Box 198062, Nashville, TN 37201, for ACSI and, in limited representation, for **Dana Shaffer, Esq.**, NEXTLINK, Tennessee.

James Benson, Esq., 1200 Peachtree Street, N.E., Atlanta, GA 30309, for AT&T Communications of the South Central States, Inc.

Jon Hastings, Esq., Cummings, Conners and Berry, P.O. Box 198062, Nashville, TN 37201, for MCI Telecommunications Corporation.

Donald L. Scholes, Esq., Branstetter, Kilgore, Stranch and Jennings, 227 Second Avenue, North, Nashville, TN 37201, for the Communications Workers of America (AFL-CIO).

Without objection from the Parties, counsel for BellSouth BSE, Inc. in Atlanta and AT&T Communications of the South Central States, Inc. participated by telephone.

II. Interventions

The petitions for intervention of NextLink, Tennessee, American Communications Services, Inc. and the Communications Workers of America (AFL-CIO) were considered at the Pre-Hearing Conference. There were no objections to the admissions of NEXTLINK, Tennessee the American Communications Services, Inc. or the Communications Workers of America AFL-CIO to the proceeding. The Order granting intervention to American Communications Services, Inc., NEXTLINK, Tennessee and the Communications Workers of America AFL-CIO is attached as Exhibit A. This Order is fully incorporated in this Report and Recommendation as if fully rewritten herein.

III. Determining a Statement of Issues

In the Notice of the Pre-Hearing Conference, dated December 15, 1997, the parties were encouraged to submit a statement of the issues in the case to the Hearing Officer not later than December 22, 1997, for inclusion in the Pre-Hearing Conference Agenda. A copy of the Agenda for the Pre-Hearing Conference incorporating the issues from the parties is attached to this Report as Exhibit B. Based upon the submissions of the Parties, the Hearing Officer recommends the following as consolidated issues for this proceeding:

1) Based upon the relationship between the Applicant and BellSouth Telecommunications, Inc. ("BST"), what safeguards, accounting or otherwise, will be put into place to prevent undue or unreasonable preferences or advantages to the Applicant, especially those under the anticompetitive provisions of Tenn. Code Ann. § 65-5-208(c)?

2) Should a detailed listing be developed of: what services the Applicant will provide; how those services will be provided; how those services will differ from services currently being offered by BST. and whether these services include services which BST itself is not authorized to provide?

3) What state and federal statutory and regulatory requirements currently imposed on BST will be violated or avoided by BellSouth BSE, Inc. as a CLEC providing service in the same service areas as BST.?

4) Does certification ensure effective compliance with the legislatively-declared telecommunications services policy of the State of Tennessee to "foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers." Tenn. Code Ann. § 65-4-123.

5) Should the Authority in this proceeding adopt policies concerning the granting of certificates to and the operation of affiliated entities providing the same and/or overlapping services?

IV. Discovery Schedule and Hearing Date

Based on discussions with the Parties and the dates available for Hearings in this matter, the Hearing Officer recommends the following schedule to the Authority, subject to approval and adoption as a part of this Report and Recommendation.


Discovery requests	January 28, 1998
Answers to Discovery requests	February 13, 1998
Prefiled Testimony	February 27, 1998
Pre-Hearing briefs	March 13, 1998
Rebuttal Testimony	March 13, 1998
Reply briefs	April 1, 1998
Hearing	April 9, 1998
Post Hearing Briefs	May 15, 1998

All submissions are due in the Office of the Executive Secretary of the Authority not later than Noon on the due date. Facsimile submissions will not be accepted, and the Authority reserves the right to modify this schedule at any time.

Respectfully submitted,


Dennis P. McNamee, General Counsel,
Acting as Hearing Officer

ATTEST:


K. David Waddell
Executive Secretary

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

IN RE: APPLICATION OF)	
BELLSOUTH BSE, INC. FOR A)	
CERTIFICATE OF CONVENIENCE)	DOCKET NO.: 97-07488
AND NECESSITY TO PROVIDE)	
INTRASTATE)	
TELECOMMUNICATIONS SERVICE)	

**ORDER GRANTING INTERVENTION TO NEXTLINK, TENNESSEE, AMERICAN
COMMUNICATIONS SERVICES, INC. AND THE COMMUNICATIONS WORKERS
OF AMERICA, AFL-CIO**

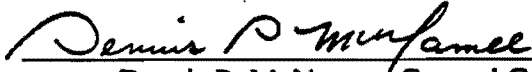
This matter is before the Tennessee Regulatory Authority ("Authority") upon the Petitions for leave to intervene of NEXTLINK, Tennessee, American Communications Services, Inc. and the Communications Workers of America AFL-CIO. Dennis P. McNamee, acting as the Hearing Officer, considered this matter at a scheduled Pre-Hearing Conference held on December 29, 1997. Pursuant to Tenn. Code Ann. § 4-5-310, the Hearing Officer has determined that this proceeding and the actions which may be taken by the Authority herein may affect or determine the legal rights and duties of the Parties, and that the interests of justice and the prompt conduct of this proceeding will not be impaired by allowing these interventions.

IT IS THEREFORE ORDERED THAT:

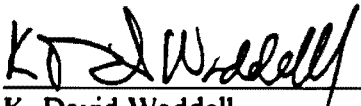
1. NEXTLINK, Tennessee, American Communications Services, Inc. and the Communications Workers of America (AFL-CIO) are hereby granted leave to intervene and to participate in this proceeding as their interests may appear in this proceeding and to receive copies of any notices, orders or other documents herein.

Exhibit A

2. That any Party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days of the date of this Order.


Dennis P. McNamee, General Counsel,
Acting as Hearing Officer

ATTEST:


K. David Waddell
Executive Secretary

Leon Gruer, Chairman
Sara Kyle, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0905

PRE-HEARING CONFERENCE AGENDA

DOCKET: 97-07505

IN RE: Application of BellSouth BSE, Inc., for a Certificate of Convenience and Necessity to Provide Intrastate Telecommunications Service

DATE: December 29, 1997, at 10:30 AM

This Pre-Hearing Conference in the above-captioned proceeding was scheduled by Notice dated December 15, 1997, for the purpose of:

1. Considering interventions
2. Determining a statement of issues, and simplifying those issues, if appropriate.
3. Obtaining admissions of fact and documents which will avoid unnecessary proof.
4. Limiting expert witnesses if appropriate.
5. Establishing a discovery schedule and hearing date.

This pre-hearing conference is being conducted, pursuant to *T.C.A. 4-5-306*, before TRA General Counsel Dennis McNamee in the Hearing Room at the Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, Tennessee.

First Item for Discussion: Interventions.

The following petitioners have requested intervention: NextLink, Tennessee ("NEXTLINK"); American Communications Services, Inc. ("ACSI"); and the Communications Workers of America, AFL-CIO.

Second Item For Discussion: Determining a Statement of Issues, and Simplifying Those Issues, If Appropriate.

The parties were encouraged to submit a statement of the issues in the case to the Pre-Hearing Officer not later than December 22, 1997, for inclusion in the Pre-Hearing Agenda. The Parties submitted the following items for discussion:

Exhibit B

ISSUES SUBMITTED BY MCI
TELECOMMUNICATIONS CORPORATION

Statement: The making or giving by BellSouth Telecommunications, Inc., as a public service company of an undue or unreasonable preference or advantage to any particular person, or any particular descriptions of traffic or service, or to subject any particular person, company, firm or corporation or any particular descriptions of traffic or service to any undue or unreasonable prejudice or disadvantage is unlawful.

a.) Based upon the relationship between BellSouth BSE, Inc. and BellSouth Telecommunications, Inc., what safeguards, accounting or otherwise, will be put into place to prevent undue or unreasonable preferences or advantages to BellSouth BSE, Inc.

b) Should a detailed listing of: what services BellSouth BSE, Inc., will provide; how those services will be provided; and how those services will differ from services currently being offered by BellSouth Telecommunications, Inc., be developed, and what are these services?

c) What statutory and regulatory requirements currently imposed on BellSouth Telecommunications, Inc., will be "avoided" by BellSouth BSE, Inc., as a CLEC providing service in the same service areas as BellSouth Telecommunications, Inc.

d) Does certification ensure effective compliance with the legislatively-declared telecommunications services policy of the State of Tennessee to "foster the development of an efficient, technologically advanced, statewide system of telecommunications services by permitting competition in all telecommunications services markets, and by permitting alternative forms of regulation for telecommunications services and telecommunications services providers. . ." T. C. A. § 65-4-123?

**Issues Presented by AT&T Communications
of the South Central States, Inc. (AT&T)**

a) Under the application filed, will BellSouth BSE ("BSE") provide Tennessee consumers with any services in BellSouth Telecommunications, Inc.'s ("BST") service areas in Tennessee that BST is not currently capable of providing and authorized to provide within BST's service areas?

b) Will granting BSE authority to operate as a Competitive Local Exchange Carrier (CLEC) within BST's service areas in Tennessee violate any obligations and/or requirements under federal or state law?

c) Will granting BSE authority to operate as a CLEC within BST's service areas in Tennessee allow BSE and/or BST to circumvent the statutory and regulatory authority of the TRA?

d) Will granting BSE authority to operate as a CLEC within BST's service areas in Tennessee allow BST and BSE the opportunity to operate against other non-BST affiliated CLECs or ILECs in an anti-competitive manner in violation of T.C.A. § 65-5-208(c) or federal law?

e) In accordance with T.C.A. § 65-4-123, will granting BSE authority to operate in BST's service areas in Tennessee increase competition among LECs and protect consumer interests in BST's service areas in Tennessee?

f) Should the TRA, pursuant to T.C.A. § 65-5-208(c), impose conditions or requirements on BSE and its affiliates, e.g., BST and BellSouth Long Distance, Inc., to assure compliance with the prohibitions

against anti-competitive practices, including specific accounting, cost allocation, reporting, marketing, tariff, or other requirements?

g) Should the TRA in this proceeding adopt policies concerning the granting of certificates to and the operation of affiliated entities providing the same and/or overlapping services?

Third Item for Discussion: Obtaining admissions of fact and documents which will avoid unnecessary proof.

Issues to be briefed rather than presented for Hearing, stipulations and admissions. Is a Protective Order necessary?

Fourth Item for Discussion: Limiting expert witnesses if appropriate.

Limitations on Interrogatories, dates for other forms of discovery and notices of depositions if necessary, names of witnesses, and whether a scheduling conference is necessary?

Fifth Item for Discussion: Establishing a discovery schedule and hearing date.

Discovery requests	January 28, 1998
Answers to Discovery requests	February 13, 1998
Prefiled Testimony	February 27, 1998
Pre-Hearing briefs	March 13, 1998
Rebuttal Testimony	March 13, 1998
Hearing	April 8, 1998
Post Hearing Briefs	April 13, 1998