



BellSouth Telecommunications, Inc.  
Suite 2101  
333 Commerce Street  
Nashville, Tennessee 37201-3300

615 214-6301  
Fax 615 214-7406

Guy M. Hicks  
General Counsel

REC'D TN  
REGULATORY AUTH.

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August 6, 1999

EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

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:

Enclosed are the original and thirteen copies of the Reply Testimony of Randall L. Frame on behalf of BellSouth Telecommunications, Inc. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch  
Enclosure

1 BELL SOUTH TELECOMMUNICATIONS, INC.

2 REPLY TESTIMONY OF RANDALL L. FRAME

3 BEFORE THE TENNESSEE REGULATORY AUTHORITY

4 DOCKET 98-00559, 99-00210, 98-00244

5 AUGUST 6, 1999

6  
7 Q. PLEASE STATE YOUR NAME, BUSINESS NAME AND ADDRESS

8 A. My name is Randall L. Frame. I am employed by BellSouth Business Systems. My  
9 business address is 333 Commerce Street, Nashville, Tennessee 37201.

10  
11 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

12 A. The purpose of my testimony is to address issues raised in the rebuttal testimony filed by  
13 other parties in this proceeding.

14  
15 Q. DOES THE REBUTTAL TESTIMONY FILED BY C. HEILMANN ON BEHALF OF  
16 TIME WARNER ADDRESS THE TWO CSAs AT ISSUE?

17 A. No. Nothing in this testimony specifically addresses the two CSAs that are currently  
18 before the TRA. Witness Heilmann has offered no specific reasons why the TRA should  
19 not approve these two CSAs.

20  
21 Q. DOES WITNESS HEILMANN OFFER ANY EXPLANATION WHY TIME WARNER  
22 COULD NOT HAVE PROVIDED SERVICE TO THESE TWO CSA CUSTOMERS?

1 A. No. Witness Heilmann acknowledged that Time Warner began actually providing service  
2 to its first customer in Tennessee in May, 1997. CSA TN98-2766-00 was signed by the  
3 customer in November, 1998, some 11 months after Time Warner began providing  
4 service. Similarly, CSA KY98-4958-00 was signed by the customer during October,  
5 1998, a year and three months after Time Warner began providing service. Therefore,  
6 Time Warner had ample opportunity to compete for these customers' business before they  
7 decided to sign a CSA with BellSouth.

8  
9 Witness Heilmann also states that Time Warner is providing local exchange  
10 telecommunications service in 19 markets, including the Memphis market in Tennessee.  
11 Since Time Warner applied for and received certification to operate statewide, I can only  
12 conclude that Time Warner has made a business decision to limit its Tennessee  
13 operations to Memphis. Witness Heilmann further states that Time Warner offers, among  
14 other services, long distance in Memphis. The ability to offer this service is a definite  
15 competitive advantage since BellSouth is currently prohibited from offering long distance  
16 service to its customers.

17  
18 Q. WHAT IS YOUR RESPONSE TO WITNESS HEILMANN'S CLAIMS CONCERNING  
19 THE ALLEGED DIFFICULTIES PRESENTED BY BELL SOUTH'S CSAs TO TIME  
20 WARNER'S MARKETING STRATEGY?

21 A. On page 2, line 33, Witness Heilmann indicates that "many" of the largest and most  
22 lucrative business customers were already obligated to long-term contracts with  
23 BellSouth and that these customers rejected Time Warner's offers due to these

1 “preexisting obligations.” Nowhere does Witness Heilmann identify these obligations as  
2 CSAs, and no evidence is offered that these “obligations” included “penalties for early  
3 termination.” Indeed, Witness Heilmann does not ever identify the “large and lucrative  
4 business customers” that have allegedly entered into long term contracts with BellSouth.  
5 Furthermore, any suggestion by Witness Heilmann that the “largest and most lucrative  
6 business customers” in Memphis have CSAs with BellSouth is false, as explained below.  
7

8 Q. HAS TIME WARNER IDENTIFIED ANY CUSTOMERS THAT DECLINED THEIR  
9 PROPOSALS BECAUSE OF AN EXISTING CSA WITH BELL SOUTH?

10 A. No. BellSouth asked this specific question in its Second Data Request, Item No. 4. In its  
11 response, Time Warner listed 23 customers that “represent some of the largest local  
12 service accounts in Memphis.” Time Warner’s response continued “All of these  
13 business have been identified by Time Warner sales and marketing personnel as being  
14 under a BellSouth term agreement and, therefore, contractually prohibited from accepting  
15 Timer Warner’s offers to provide service.”  
16

17 First, Time Warner failed to answer BellSouth’s question since it only identified  
18 customers that it identified as having a “term agreement”. In fact, only five of these 23  
19 customers have CSAs with BellSouth. Further, no BellSouth “term agreement”,  
20 including CSAs, contractually prohibits any customer from accepting other offers to  
21 provide service.  
22

1 Q. DO YOU AGREE WITH WITNESS HEILMANN'S COMMENTS THAT  
2 BELLSOUTH'S CSAs ALLEGEDLY HAVE FRUSTRATED THE DEVELOPMENT  
3 OF COMPETITION IN TENNESSEE?

4 A. No. Witness Heilmann's claim that BellSouth convinced the "most lucrative business  
5 customers" to enter into CSAs, "before new companies such as Time Warner became  
6 operational" if false. First, some CLECs, such as NEXTLINK, were operating in  
7 Tennessee as early as 1996. Second, BellSouth had entered into only 60 CSAs in  
8 Tennessee from 1994 through May, 1997, when Time Warner became operational in the  
9 state. Thus, Time Warner and other CLECs have been able to compete successfully in  
10 Tennessee notwithstanding BellSouth's CSAs.

11  
12 Witness Heilmann's claims that BellSouth has "foreclosed" competition also is belied by  
13 Time Warner's experiences. It is my understanding that since it first began filing CLEC  
14 activity reports with the TRA in July, 1998, the number of customers and the number of  
15 access lines served by Time Warner in Memphis has grown 233% and 265%,  
16 respectively, through February 28, 1999. These numbers clearly demonstrate that Time  
17 Warner is successfully competing in the single market in Tennessee it has chosen to enter  
18 and that competition has not been "foreclosed" by BellSouth's CSAs.

19  
20 Furthermore, it is noteworthy that, while criticizing BellSouth's CSAs, Witness Heilmann  
21 extols the benefits of contract services arrangements, claiming that "such contracts are  
22 essential to the development of facilities-based competition." (Rebuttal at 2). Indeed, in  
23 its supplemental responses to BellSouth's First Set of Data Requests, Time Warner

1 produced more than 50 such contracts it has with its customers in Tennessee. I suspect  
2 that the percentage of Time Warner's business customers under a CSA is significantly  
3 higher than the less than 1% of BellSouth's business customers that are subject to a CSA  
4 in Tennessee.

5  
6 Q. DO YOU AGREE WITH THE RELIEF TIME WARNER IS SEEKING IN THIS  
7 PROCEEDING?

8 A. No. Time Warner apparently wants BellSouth's CSA customers to be able to walk away  
9 from an existing CSA with BellSouth in order to do business with a competitor of  
10 BellSouth's. It is interesting that Time Warner is not proposing that its CSA customers be  
11 permitted to walk away from their contracts in order to do business with BellSouth. Time  
12 Warner is essentially seeking to use this proceeding to obtain a competitive advantage  
13 and to disadvantage BellSouth in the marketplace. Furthermore, Time Warner's rationale  
14 – that CSA customers did not have “choices” when they entered into a CSA with  
15 BellSouth – is flawed. In this case, both CSA customers at issue here had plenty of  
16 “choices” in selecting their local telecommunications providers and chose BellSouth.  
17 They also chose a CSA as the best alternative to meet their telecommunications needs,  
18 and that choice should not be nullified as Time Warner seeks to do.

19  
20 Q. WHAT IS YOUR RESPONSE TO THE DIRECT TESTIMONY FILED BY JENNIFER  
21 WEST ON BEHALF OF NEXTLINK?

22 A. Similar to Witness Heilmann's testimony, Ms. West offers no specific comments on the  
23 two CSAs pending before the TRA and gives no reason why the TRA should not approve

1       these two CSAs. Instead, Ms. West describes contact with a potential customer who does  
2       not appear to be a party to either of the subject CSAs. Ms. West simply has not provided  
3       sufficient detail for BellSouth to respond to her testimony. It is not even clear that the  
4       potential customer in question has a CSA with BellSouth.

5  
6   Q.   FROM THE INFORMATION MS. WEST DID PROVIDE, WHAT CAN YOU  
7       ASCERTAIN ABOUT THIS CUSTOMER?

8   A.   Based on the attachment to Ms. West's testimony, it appears this customer was  
9       approached by NEXTLINK with a sales proposal which the customer apparently found  
10      attractive. This prompted BellSouth to make a counter-proposal which the customer  
11      evidently found to be more attractive. The attachment also shows that NEXTLINK is  
12      willing and able to develop marketing approaches to address termination liability. The  
13      document Ms. West relies upon is an example of competition at work. Incidentally, the  
14      services in question appear to be tariffed services, not services provided under CSAs.

15  
16  Q.   CAN YOU COMMENT ON MS. WEST'S STATEMENT WITH REGARD TO THE  
17      SECOND CUSTOMER?

18  A.   Yes. The customer expressed interest in NEXTLINK's initial proposal but presumably  
19      did not accept it because of their MegaLink<sup>®</sup> contract with BellSouth. NEXTLINK  
20      monitored this customer and made another proposal when BellSouth's contract expired.  
21      The customer accepted this second offer. This demonstrates NEXTLINK's ability to  
22      monitor customers' existing business arrangements and successfully time its offers to  
23      secure their business. Additionally, NEXTLINK could have resold this MegaLink<sup>®</sup>

1 contract at any point in time, but chose to wait until the customer's BellSouth contract  
2 expired to make a proposal for facilities-based service.

3  
4 Q. WHAT IS YOUR RESPONSE TO THE TESTIMONY FILED BY MARGARET  
5 BROWN ON BEHALF OF NEXTLINK?

6 A. Ms. Brown states that NEXTLINK contacted the "financial institution" in November,  
7 1998. NEXTLINK began operation in Tennessee on July 4, 1996. For whatever reason,  
8 NEXTLINK chose to wait two years and four months before contacting this particular  
9 customer. Despite that lengthy delay, NEXTLINK was successful in providing access  
10 service to this customer's location.

11  
12 Q. IS THE "FINANCIAL INSTITUTION" LOCKED INTO BELL SOUTH'S SERVICE AS  
13 MS. BROWN CLAIMS?

14 A. No. Ms. Brown indicates that the data manager for this customer stated that "they are  
15 locked in and cannot use anyone else for local service." Even assuming Ms. Brown is  
16 accurately reporting what the data manager said, the data manager is mistaken. Although  
17 BellSouth has provided NEXTLINK with a copy of the CSA for this customer, Ms.  
18 Brown did not and cannot refer to any provision in this CSA that supports her view that  
19 the "financial institute is locked in and cannot use anyone else for local service."

20  
21 Q. CAN YOU COMMENT ON MS. BROWN'S CONTACT WITH "THE STORE"?

22 A. Yes. According to Ms. Brown, a manager at the Store's regional office indicated that the  
23 Store was under contract to BellSouth during February, 1998. Whatever the source of



1 this information, it is incorrect. This BellSouth CSA was signed by the customer on  
2 October 30, 1998, and by BellSouth on November 2, 1999. Therefore, the regional Store  
3 manager was simply misinformed. Again, it is curious that NEXTLINK delayed for two  
4 years and seven months before contacting this particular customer.

5  
6 During another contact in March, 1998, according to Ms. Brown, a local store manager  
7 indicated that "corporate" had taken the matter out of his hands. This statement reflects  
8 an internal business decision by this customer on how they chose to do business. As Ms.  
9 Brown is aware, many companies choose to centralize certain internal decision-making  
10 functions. Ms. Brown is a very experienced sales manager and is, no doubt, aware of the  
11 importance of identifying and contacting the appropriate decision-makers for any  
12 potential customer.

13  
14 Q. ON PAGES 2-3 OF HER TESTIMONY, MS. BROWN ALLEGES THAT BELL SOUTH  
15 IS "LOCKING UP LARGE CUSTOMERS INTO LONG TERM CONTRACTS  
16 BEFORE COMPETITION HAS A CHANCE TO DEVELOP." DO YOU AGREE  
17 WITH THIS STATEMENT?

18 A. No. NEXTLINK has been providing service in Tennessee since July, 1996. CSAs  
19 TN98-2766-00 and KY98-4958-00 were signed in late 1998. They are currently pending  
20 before the Authority, in August, 1999. No one can claim that competition has not been  
21 present and growing in the Tennessee business market in the 1998-1999 time period.

1 Q. DO YOU AGREE WITH MS. BROWN'S COMPARISON OF THE SERVICE  
2 PACKAGES OFFERED BY NEXTLINK AND BELL SOUTH?

3 A. No. Ms. Brown's comparison is inaccurate. Although BellSouth is an incumbent  
4 provider, BellSouth does not offer service to all of the Store's locations, either in  
5 Tennessee or in other BellSouth states. Further, as is the case with Time Warner, and  
6 every other competing carrier, NEXTLINK can also offer long distance service to its  
7 customers, which BellSouth cannot do at present.

8  
9 NEXTLINK has deliberately chosen where and when it will enter particular markets  
10 along with the specific services it will offer in those markets. Expecting customers to  
11 evaluate proposals for service and forgo an attractive proposal while waiting for  
12 NEXTLINK to contact them and/or expand its service territory is unrealistic and not in  
13 the customers' best interest.

14  
15 Q. MS. BROWN STATES THAT BELL SOUTH'S VOLUME AND TERM CONTRACTS  
16 ARE "EXCLUSIVE USE" AGREEMENTS AND THE CUSTOMER IS PENALIZED IF  
17 HE OBTAINS ANY PORTION OF HIS LOCAL TELEPHONE SERVICE FROM  
18 ANOTHER CARRIER. IS THIS STATEMENT CORRECT?

19 A. Absolutely not. Neither the CSA with the Financial Institution nor the Store requires  
20 exclusive use of BellSouth's services or penalizes the customer for obtaining other  
21 telecommunications services from another carrier.

1 Q. CAN YOU COMMENT ON THE RELIEF REQUESTED BY MS. BROWN ON PAGE  
2 4 OF HER TESTIMONY?

3 A. Yes. Termination Liability charges are not “penalties.” They are charges willingly  
4 agreed to by the customer in exchange for discounts it receives. Further, the customer has  
5 full control of when it might choose to terminate a contract, thereby avoiding any  
6 payment for services it is no longer using.

7  
8 Q. WHAT OTHER COMMENTS DO YOU HAVE IN RESPONSE TO MS. BROWN’S  
9 TESTIMONY?

10 A. I agree with Ms. Brown’s statement that “Consumers should be given more choices, not  
11 fewer choices.” (page 4, line 3). This focus on the customer is entirely appropriate, and  
12 these two CSAs should be approved by the TRA to allow these customers the benefit of  
13 choices they have made. The only basis Ms. Brown has given the TRA to deny the two  
14 CSAs that are currently under review is the completely incorrect notion that these  
15 contracts are exclusive contracts that lock customers into BellSouth’s services.

16  
17 Q. CAN YOU RESPOND TO TESTIMONY FILED BY DR. STEPHEN N. BROWN ON  
18 BEHALF OF THE CAD THAT ADDRESSES BELL SOUTH’S “TOP 500”  
19 CUSTOMERS (PAGE 5, LINE 3)?

20 A. Yes. BellSouth identified the “Top 500” customers throughout its nine-state region.  
21 Because of the significant revenue from these customers and because these customers are  
22 targeted by our competitors, BellSouth was interested in retaining business from these  
23 customers.

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Q. ARE THE “FINANCIAL INSTITUTION” AND “THE STORE” INCLUDED IN BELLSOUTH’S “TOP 500” CUSTOMERS?

A. The “financial institution” was one of BellSouth’s “Top 500” customers. “The Store” was not.

It should be noted that the e-mail that Dr. Brown relies on (Exhibit CA-SNB Schedule 1) does not address either of these customers. In fact, the e-mail shows that Time Warner, MCI and BellSouth all competed for this customer’s business. Moreover, the customer referenced in this e-mail is a current BellSouth CSA customer and is a current NEXTLINK customer as well. This refutes the claim that customers are “locked in” by CSAs.

Q. DR. BROWN ASSERTS THAT BELLSOUTH HAS CAPTURED WELL OVER 40 PERCENT OF ITS “TOP 500” CUSTOMERS THROUGH THE 200 CSAs ON FILE WITH THE TRA. IS THIS STATEMENT CORRECT?

A. No. Currently, only 57 companies, or 11.4%, of these “Top 500” customers have a CSA with BellSouth in Tennessee.

Q. ARE CSAs AVAILABLE ONLY TO THESE “TOP 500” CUSTOMERS?

A. No. BellSouth offers CSAs to customers meeting the three criteria stated in my Direct Testimony, and these criteria include customers beyond the scope of the “Top 500”.

1 Q. DO YOU AGREE WITH DR. BROWN'S ASSERTION THAT BELL SOUTH PRE-  
2 SCREENS CUSTOMERS BEFORE OFFERING THEM A CSA AND ENGAGES IN  
3 "HARDBALL 'TAKE-IT-OR-LEAVE-IT'" POSITIONS?

4 A. No. Dr. Brown misinterprets my Direct Testimony. First, a customer must meet the first  
5 two criteria stated in my Direct Testimony. These are:

- 6 1. BellSouth has reason to believe that the price of service under its existing tariff  
7 offering is not competitive for that particular customer; and
- 8 2. the customer has a competitive alternative available.

9 Once a customer is identified as a candidate by these criteria, BellSouth may seek to  
10 negotiate a CSA with that customer. The customer's ultimate acceptance of a CSA is an  
11 outcome of the negotiation process between BellSouth and the customer. Dr. Brown's  
12 claim that negotiation is absent from this process is simply wrong.

13  
14 BellSouth and the customer only reach agreement on a CSA after negotiations between  
15 the parties. Those negotiations necessarily involve some give and take on both sides, but  
16 the negotiations ultimately produce a CSA that both parties feel are in their best interests.  
17 Otherwise, there is no agreement between the customer and BellSouth. The very fact that  
18 these two CSAs contain different provisions is clear evidence that these CSAs were  
19 negotiated with these particular customers.

20  
21 Q. DO TERMINATION CHARGES FOR TARIFFED SERVICES APPLY IN ADDITION  
22 TO TERMINATION CHARGES SPECIFIED IN THESE CSAs?

1 A. Yes. As I stated in my Direct Testimony, these CSAs only provide a discount on billed  
2 revenue, not rates on individual services. The customer orders any service they may  
3 choose through the tariff. Since the CSA only applies a discount to billed revenue, the  
4 CSA termination charge provision only applies if the customer terminates the CSA. Any  
5 termination charges specified in the tariff for individual services will only apply if the  
6 customer terminates those services. Said another way, since the CSA is separate and  
7 distinct from tariffed services, the termination charges also operate independently. The  
8 customer could cancel the CSA without canceling any services, or cancel any or all of the  
9 tariffed services without canceling the CSA.

10  
11 Q. DR. BROWN CLAIMS THAT BELL SOUTH "TRADES OFF" VARIOUS  
12 PROVISIONS IN A GIVEN CSA THAT PRODUCE DIFFERENT RESULTS FROM  
13 OTHER CSAs. IS THAT ACCURATE?

14 A. Absolutely. This illustrates the very negotiation process that Dr. Brown said was absent  
15 in BellSouth's supposed "hardball 'take-it-or-leave-it' " attitude. In fact, the attachments  
16 to Dr. Brown's testimony (Exhibits CA-SNB, Schedules 1 – 4) document the fact that  
17 negotiations are required between BellSouth and its customers.

18  
19 Q. DOES THIS "TRADE OFF" PRODUCE CSAs THAT ARE DISCRIMINATORY?

20 A. Not at all. These CSAs are simply tailored to individual customers through negotiations  
21 to address issues unique to each customer.

1 Q. IS IT BELLSOUTH'S POLICY TO "DOUBLE GIG" CUSTOMERS IF THEY TAKE  
2 BUSINESS ELSEWHERE, AS DR. BROWN CLAIMS?

3 A. No, this is not BellSouth's policy. Termination charges will result if the customer  
4 terminates the CSA which, again, only provides a discount to total billed revenue for this  
5 customer. The customer may have ordered various telecommunications services under  
6 the various provisions of the appropriate tariffs, and these services are independent of the  
7 CSA. If the customer elects to terminate the CSA and the tariffed services at the same  
8 time, then he will incur the termination charge from the CSA and any applicable  
9 termination charges under the tariffs for the specific services he has ordered. However,  
10 the customer has a number of other options. For instance, the customer may elect to  
11 terminate the CSA and incur a termination charge, but keep the services, thereby avoiding  
12 a termination charge from the tariff. Alternatively, the customer may choose to terminate  
13 some services, incurring only the termination charges, if any, from the appropriate tariff,  
14 but keep the CSA, avoiding any termination charge from the CSA.

15  
16 The customer has willingly agreed to enter an agreement with BellSouth having this  
17 possible outcome. However, such an outcome is clearly under the control of the  
18 customer. Finally, since the date of the e-mail referenced by Dr. Brown, BellSouth has  
19 substantially modified the termination liability provisions it proposes to prospective  
20 Volume and Term CSA customers.

21  
22 Q. PLEASE RESPOND TO DR. BROWN'S STATEMENT REGARDING PARAGRAPH  
23 X, BUSINESS CHANGE, IN THESE CSAs.

1 A. Paragraph X permits adjustments to each CSA under certain specified conditions. These  
2 conditions clearly do not permit the customer to avoid previously agreed-to revenue  
3 commitments by transferring services to another carrier. It is important to note that each  
4 customer is not precluded from using services from another carrier, although this will not  
5 reduce the customer's existing commitment regarding billed revenue levels.

6  
7 Moreover, Dr. Brown has apparently overlooked provisions that clearly allow the  
8 customer to transfer this CSA to a reseller without incurring any termination charges  
9 specified in the CSA.

10  
11 Q. CAN YOU ADDRESS DR. BROWN'S COMMENTS REGARDING YOUR  
12 COMPARISON OF BELLSOUTH'S TERMINATION CHARGE WITH ITS  
13 COMPETITORS?

14 A. Yes. Dr. Brown claims that language in BellSouth's CSAs is an economic tool to punish  
15 the customer if it takes its business elsewhere, i.e., to a competitor. He also notes that  
16 language in the tariffs of competitors does not include specific actions taken if a customer  
17 goes to a competitor. Dr. Brown overlooks the fact that BellSouth makes all of its CSAs  
18 available for resale, which is consistent with the arbitration decision by the TRA.  
19 Therefore, it is appropriate for BELLSOUTH'S CSAs to address the event of a customer  
20 transferring a CSA to a reseller as opposed to simply terminating the CSA altogether.  
21 The tariffs of competitors need only address the latter situation since they have no  
22 obligation to resell their contracts to other competitors. BellSouth's CSAs therefore,



1 offer more flexibility than its competitors' tariffs in that resale, without a termination  
2 charge, is permitted.

3  
4 Dr. Brown's third comment alludes again to the situation which would simply result from  
5 a customer's choice to terminate two separate arrangements, involving a CSA and tariffs,  
6 at the same time. This situation is not evident in the tariffs of competitors simply because  
7 they choose to not offer anything comparable to BellSouth's Volume and Term CSA.  
8 Nothing prevents competitors from offering similar Volume and Term arrangements.

9  
10 Q. DR. BROWN ALSO ASSERTS (P. 12) THAT CUSTOMERS ARE PROHIBITED  
11 FROM DISCLOSING CSAs TO COMPETITORS OR OTHER CUSTOMERS AND  
12 THAT THE CSA PROCESS IS A "GUESSING GAME." DO YOU AGREE?

13 A. No. After entering into a CSA, customers can choose to disclose their CSAs to a  
14 competitor of BellSouth. Customers are also free to disclose their CSAs to other  
15 customers if they so choose.

16  
17 Q. CAN YOU ADDRESS DR. BROWN'S COMMENTS REGARDING PARAGRAPH  
18 XIII, RATE ASSURANCE, IN CSA TN99-2766-00?

19 A. Yes. First, let me point out that this provision is the result of negotiations with this  
20 specific customer who wanted this provision included in its CSA. This provision was  
21 proposed by the customer. There is no similar provision in CSA KY98-4958-00.  
22 Second, I disagree with Dr. Brown's assumptions and conclusions regarding behavior of  
23 the customer and BellSouth. This provision is the result of specific negotiations between

1 the customer and BellSouth, and each agreed to this provision. Regarding Dr. Brown's  
2 "ace-in-the-hole" characterization, BellSouth would suggest that this rate assurance  
3 provision is in the customer's interest because it guarantees the customer will benefit  
4 from a lower competitive offer. This lower offer either generates a lower offer from  
5 BellSouth, with an adjustment in the revenue commitment under the CSA, or the  
6 customer can accept the competitive offering, again with an adjustment in the revenue  
7 commitment under the CSA. Either way, the customer benefits.

8  
9 Q. CAN YOU ADDRESS DR. BROWN'S CALCULATIONS IN SCHEDULE 6?

10 A. Yes. While I am not clear on the purpose of Dr. Brown's calculations, and have not had  
11 the opportunity to fully review his numbers, it appears Dr. Brown is trying to establish  
12 that the rate assurance and termination liability provisions of CSA TN98-2766-00 are  
13 somehow related. This is incorrect. First, as I stated previously, the rate assurance  
14 provision (Paragraph XIII) was proposed by the customer in CSA TN98-2766-00.  
15 Second, there is no similar provision in CSA KY98-2766-00. Both of these facts are  
16 contrary to the premise of Dr. Brown's calculations.

17  
18 Q. CAN YOU ADDRESS MR. BUCKNER'S COMMENTS AND "CALCULATIONS"  
19 REGARDING PARAGRAPH XIII, RATE ASSURANCE, IN HIS TESTIMONY ON  
20 PAGES 5-8?

21 A. Yes. This provision has already been addressed in my comments on Dr. Brown's  
22 testimony. However, I would like to point out that Mr. Buckner is incorrect in asserting  
23 that "Bell will be able to stop a customer from moving to a competitor. . .". This

1 provision, proposed by this customer, ensures that the customer will benefit from lower  
2 competitive proposals. This provision was negotiated between the customer and  
3 BellSouth, and accepted by both parties as being in their mutual best interests.  
4 Additionally, Mr. Buckner is simply in error if he is assuming in his calculations that  
5 there is some correlation between the tariffed rates of BellSouth and the tariffed rates of  
6 BellSouth's competitors.

7  
8 Q. CAN YOU ADDRESS MR. BUCKNER'S COMMENTS REGARDING  
9 TERMINATION OF THE CONTRACT DURING A CONTRACT YEAR,  
10 APPEARING ON PAGE 9 OF HIS TESTIMONY?

11 A. Yes. Mr. Buckner conveniently summarized only part of my testimony. My Direct  
12 Testimony stated that "termination of the Contract Service Arrangement at the end of a  
13 contract year triggers a flat charge. Termination at any other time triggers additional  
14 charges as described in Paragraph B of this Section."

15  
16 Q. IS MR. BUCKNER'S ANALYSIS OF THE TERMINATION PROVISIONS IN CSA  
17 KY-98-4958-00 CORRECT?

18 A. No. On pages 14 and 15, he states that the termination "penalty" would increase each  
19 month for the first year and then remain constant. He goes on to state that the termination  
20 "penalty" would be the same regardless of whether the customer terminated the CSA at  
21 the end of the first year or at the end of the 35<sup>th</sup> month. This analysis suggests that Mr.  
22 Buckner does not understand the calculations detailed on the amendment to this CSA.

1 The revised language for Paragraph IX in the amendment states that the termination  
2 liability will consist of the following:

- 3 1. Discounts received for the life of the contractor for the previous 12 months,  
4 whichever is less; and
- 5 2. The prorated portion of the Contract Implementation and Tracking cost.

6  
7 The amendment also contains an example calculation of the Contract Implementation and  
8 Tracking costs, and this example clearly shows a factor consisting of the remaining  
9 months in the contract divided by the total contract length. This factor clearly decreases  
10 the prorated Contract Implementation and Tracking costs with time.

11  
12 Q. DO YOU AGREE WITH MR. BUCKNER'S COMMENTS ON PAGE 17 OF HIS  
13 REBUTTAL TESTIMONY?

14 A. No. Mr. Buckner is clearly mis-reading the contract paragraphs referenced in his  
15 comments. First, these paragraphs never state that service will be provided under these  
16 CSAs at discounted rates. Rather, Paragraph II-B (TN98-2766-00) and Paragraph III-A  
17 (KY98-4958-00) state that these discounts will be applied to monthly billings, or monthly  
18 billed revenue. Further, neither CSA provides the customer with a "rebate".

19  
20 Both CSAs contain a chart showing the Minimum or Annual Revenue Base and the  
21 corresponding discount applied to that base (Appendix II, TN98-2766-00, and Appendix  
22 III, KY98-4958-00). Initially, the customer specifies the desired Revenue Base, thereby  
23 selecting the discount applied to monthly billed revenue during that contract year. Under

1 the Annual True-Up provisions (Paragraph XIV, TN98-2766-00 and Paragraph XIII,  
2 KY98-4958-00), if the customer's actual Annual Revenue Base for a given year exceeds  
3 their commitment for that year by an amount that entitles them to a higher discount, then  
4 a credit is applied to the next customer bill to effectively give the customer the higher  
5 discount. Mr. Buckner's conclusion that BellSouth is providing both a discount and a  
6 rebate is simply incorrect.

7  
8 Q. ARE THE DISCOUNTS PROVIDED UNDER THESE TWO CSAs THE SAME?

9 A. No. Again, the discounts are based on the specific services used by each customer and  
10 the negotiating process. BellSouth ensures that the discounts offered under these CSAs  
11 do not have the effect of discounting services used by each customer below costs.

12  
13 Q. CAN YOU ADDRESS THE COMPARISON CHARTS PREPARED ON PAGES 21  
14 AND 25 OF MR. BUCKNER'S TESTIMONY?

15 A. Yes. The comparison chart on page 21 shows the discounts and revenue commitments  
16 for the two CSAs pending before the TRA along with five other CSAs previously  
17 approved by the TRA. It is interesting to note that this analysis compares contracts  
18 negotiated with a large financial institution, a large retail store chain, two state  
19 universities, a community college, a health care provider and an entity of AT&T. Given  
20 the variations in services used by each of these customers, it is hardly surprising that the  
21 revenue commitments and discounts would vary between these CSAs. The same point  
22 applies to the chart on page 25.

1 Q. IS MR. BUCKNER CORRECT IN CONCLUDING THAT THESE CSAs INCLUDE  
2 "TYING" ARRANGEMENTS?

3 A. No. The discount on billed revenue is negotiated, based partially on the customer's  
4 specific mix of services. However, it is the customer, not BellSouth, that controls this  
5 service mix. The customer is free to choose any services it wishes and is not required to  
6 purchase any "specific service or group of services."

7  
8 Q. ON PAGE 35 OF HIS TESTIMONY, MR. BUCKNER CLAIMS THAT UNDER  
9 BELL SOUTH'S DEFINITION OF "SIMILARLY SITUATED", BELL SOUTH COULD  
10 CHARGE A BUSINESS WITH ONLY ONE LINE A DIFFERENT RATE THAN IT  
11 WOULD CHARGE "THE CUSTOMER'S BUSINESS NEIGHBOR FOR A SINGLE  
12 BUSINESS LINE WHO ALSO PURCHASES CALL FORWARDING." HOW DO  
13 YOU RESPOND?

14 A. BellSouth's Complete Choice service subscribers pay a discounted rate for local service  
15 with a package of vertical features. Customers not subscribing to Complete Choice pay a  
16 different rate for local service. This does not mean that there is price discrimination.  
17 Clearly, a customer subscribing to a 1FB line is not similarly situated to a Complete  
18 Choice customer.

19  
20 Although I am not a lawyer, T.C.A. §65-4-122 provides

21 (a) If any common carrier or public service company, directly or  
22 indirectly, by any special rate, rebate, drawback, or other device, charges,  
23 demands, collects, or receives from any person a greater or less  
24 compensation for any service within this state than it charges, demands,  
25 collects, or receives from any other person for service of a like kind under

1           substantially like circumstances and conditions, and if such common  
2           carrier or such other public service company makes any preference  
3           between the parties aforementioned such common carrier or other public  
4           service company commits unjust discrimination, which is prohibited and  
5           declared unlawful. (Emphasis added.)  
6

7           Mr. Buckner's argument simply fails to address the language I have highlighted from the  
8           statute.

9    Q.    DO YOU AGREE WITH MR. BUCKNER'S CONCLUSION THAT SERVICES  
10          DISCOUNTED UNDER THESE CSAs ARE BELOW COSTS?

11   A.    No. First, as previously discussed, no services are specifically provided or discounted  
12          under these Volume & Term CSAs. Second, the analysis provided with each CSA is  
13          intended to demonstrate that no discount will have the effect of pricing a particular  
14          service below its cost. Third, Mr. Buckner incorrectly equates individual service  
15          elements or options, identified by Universal Service Order Codes (USOC) with a  
16          "service". While the CSA discounts may have the effect of discounting some individual  
17          service elements below costs, in no case will the effect be to discount the service itself  
18          below costs. In fact, Exhibit RTB-2, page 2, Paragraph 1 attached to Mr. Buckner's  
19          testimony concludes "However, all the CSAs reviewed to date exceeded cost in their  
20          entirety; even so, this requirement of the 'price floor' in § 65-5-208 should be borne in  
21          mind in reviewing subsequent CSAs."  
22

23   Q.    DOES THIS CONCLUDE YOUR TESTIMONY?

24   A.    Yes, it does.  
25

AFFIDAVIT

STATE OF: Tennessee  
COUNTY OF: Davidson

BEFORE ME, the undersigned authority, duly commissioned and qualified in and for the State and County aforesaid, personally came and appeared Randall L. Frame-Sales Manager, BellSouth Business Systems, BellSouth Telecommunications, Inc., who, being by me first duly sworn deposed and said that:

He is appearing as a witness before the Tennessee Regulatory Authority in Docket No. 98-00559, 99-00210 and 99-00244 on behalf of BellSouth Telecommunications, Inc., and if present before the Authority and duly sworn, his testimony would be set forth in the annexed testimony consisting of 22 pages and 0 exhibit(s).

Randall L. Frame

Randall L. Frame

Sworn to and subscribed  
before me this 6<sup>th</sup>  
day of August, 1999

Carolyn Hanesworth  
NOTARY PUBLIC



CERTIFICATE OF SERVICE

I hereby certify that on August 6, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight

Richard Collier, Esquire  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0500

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Henry Walker, Esquire  
Boult, Cummings, et al.  
414 Union Ave., #1600  
P. O. Box 198062  
Nashville, TN 39219-8062

☒ Hand  
☐ Mail  
☐ Facsimile  
☐ Overnight

Jon Hastings, Esquire  
Boult, Cummings, et al.  
414 Union St., #1600  
Nashville, TN 37219

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Charles B. Welch, Esquire  
Farris, Mathews, et al.  
511 Union St., #2400  
Nashville, TN 37219

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

James Lamoureux, Esquire  
AT&T  
1200 Peachtree St., NE  
Atlanta, GA 30309

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

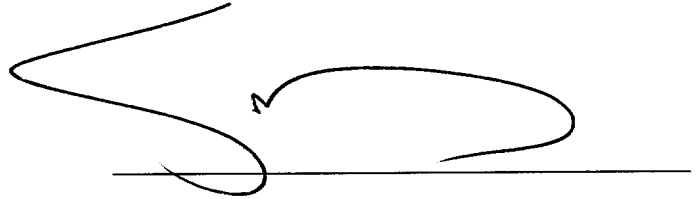
Vance Broemel, Esquire  
Consumer Advocate Division  
426 5th Avenue, N., 2nd Floor  
Nashville, TN 37243

☐ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Carolyn Tatum Roddy, Esquire  
Sprint Communications Co., L.P.  
3100 Cumberland Circle, N0802  
Atlanta, GA 30339

☒ Hand  
☒ Mail  
☐ Facsimile  
☐ Overnight

Val Sanford, Esquire  
Gullett, Sanford, et al.  
230 4<sup>th</sup> Ave., N., 3<sup>rd</sup> Fl.  
P. O. Box 198888  
Nashville, TN 37219-8888

A handwritten signature in black ink, appearing to be 'Val Sanford', is written over a horizontal line. The signature is stylized with a large, sweeping 'V' and a circular flourish.