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February 16, 1999

Mr. David Waddell  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

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 David:

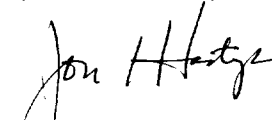
Enclosed please find the original plus thirteen copies of MCImetro Access Transmission Services, Inc.'s Response to BellSouth Telecommunications, Inc.'s Motion to Compel Discovery which we would appreciate your noting filed in the above-captioned docket. We have provided copies of our Response to all parties of record.

Thank you for your assistance in this matter. served on all parties of record.

Sincerely,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Jon E. Hastings

JEH/th

Enclosures

cc: All Parties of Record

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**IN RE:        Proceeding for the Purpose of Addressing Competitive Effects of Contract  
Service Arrangements Filed by BellSouth Telecommunications, Inc. in  
Tennessee**

**Docket No. 98-00559**

**MCIMETRO ACCESS TRANSMISSION SERVICES, INC.'S RESPONSE TO  
MOTION TO COMPEL DISCOVERY**

MCImetro Access Transmission Services, Inc. ("MCImetro") hereby responds to the Motion to Compel Discovery filed by BellSouth Telecommunications, Inc. ("BellSouth") in this docket. In its Motion to Compel, BellSouth attempts to require Competing Intervenors, including MCImetro, to respond to certain Data Requests in this docket. MCImetro believes the Data Requests filed by BellSouth are irrelevant to the issue to be addressed by the Tennessee Regulatory Authority ("TRA") in this proceeding and would oppose BellSouth's Motion to Compel Discovery from MCImetro.

This docket was opened by the TRA for the express purpose of addressing the competitive effects of contract service arrangements *filed by BellSouth Telecommunications, Inc.* in Tennessee. A monopolist's contract service arrangement is, by its very nature, anti-competitive, in that it takes out of the stream of competition for an extended period of time a potential customer for other competing carriers. If the playing field were level, and all competitors (including BellSouth) had equal, or relatively equal, market strength, the issues surrounding competitive effects of contract service arrangements might still be relevant, but obviously, such issues would be very narrow (e.g., excessive termination fees for less sophisticated customers, etc.). In the present

environment where vibrant competition has not yet taken hold, a much different inquiry must be made to ensure Tennessee customers are not prevented from obtaining the benefits of competition when it does come.

If BellSouth's Motion to Compel Discovery from MCImetro and other Competing Intervenors is granted, the intended effect of BellSouth's Discovery Requests would be accomplished - the obfuscation of the issue the TRA is seeking to address. Certainly, as the monopoly provider of local services in its service areas in Tennessee, BellSouth, on the eve of competition, is seeking to "tie up" those very businesses which would be the logical potential customers for many new competitors seeking to gain a foothold in the local service market in the BellSouth territories. Even in those very small portions of BellSouth's territories where a local service provider may be attempting to compete with BellSouth, the anti-competitive effects of BellSouth's efforts to bind customers for extended periods of time are, in themselves, violative of the public policy of the State of Tennessee to foster competition in the telecommunications markets.

BellSouth, in its Motion to Compel Discovery, goes through a listing of the Data Requests and provides the response of each of the Competing Intervenors. The point is missed by BellSouth, however, in that BellSouth's contract service arrangements are, by their very nature, anti-competitive, in that they effectively prevent competition from gaining any foothold at this very delicate time in the soon to be (but certainly not yet) competitive local exchange marketplace. The very fact BellSouth week after week attempts to seek approval for a various contract service arrangement is evidence of the increased effort BellSouth is placing on assuring itself of customers well into the future, all at the expense of those competitors and/or potential competitors who in

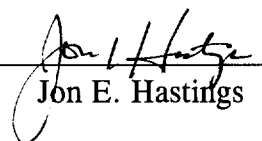
a few short months (but not now) will be able to offer similar or better service to these customers. This is harmful to the business customers as well, some of which have no choice but BellSouth right now, and others of which are still unaware of competitive options in the local exchange market.

The TRA, pursuant to its general supervisory powers with regard to telecommunications matters in the State of Tennessee, should be able to request of any competing carrier the opportunity to review such competing carrier's contract service arrangements to determine if the terms thereof are so egregious that regulation is needed to protect Tennessee consumers. Given the fact the consumers entering into such agreements are experienced businesses, the marketplace, once there is a marketplace, will be the ultimate arbiter of the terms of long term contract service arrangements. Until we reach that point, however, the TRA must assure Tennessee customers they will have the opportunity to receive the benefits of competition. A very important mechanism to so assure Tennessee consumers is to, at this time, prevent BellSouth from legally binding such customers so as to effectively prevent choice in the future.

For the reasons stated, MCImetro respectfully requests the TRA deny BellSouth's Motion to Compel Discovery.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:  \_\_\_\_\_  
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MCImetro Access Transmission Services, Inc.