

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.

'99 JUN 4 PM 11 49

IN RE: **BellSouth Tariff to Offer Contract Service Arrangement TN98-2766-00 for**
Maximum 13% Discount on Eligible Tariffed Services, Docket No. 99-00210 ✓
THE EXECUTIVE SECRETARY

BellSouth Tariff to Offer Contract Service Arrangement TN98-6726-00 for
ISDN Business Service, Docket No. 99-00230 ✓

BellSouth Tariff to Offer Contract Service Arrangement KY98-4958-00 for an
11% Discount on Various Services, Docket No. 99-00244 ✓

BellSouth Tariff to Offer Contract Service Arrangement TN98-6303-01 for
ISDN Business Service, Docket No. 99-00262

**MOTION OF SECCA AND NEXTLINK FOR CONTINUANCE and RESPONSE TO
BELLSOUTH'S "OPPOSITION TO 'AMENDED' AND 'SUPPLEMENTAL' PETITIONS
TO INTERVENE"**

MOTION FOR A CONTINUANCE

The final conference agenda for June 8, 1999, includes consideration of petitions to intervene in four of BellSouth's contract service arrangements: dockets 99-00210, 99-00230, 99-00244, and 99-00262. These petitions to intervene have been filed on behalf of NEXTLINK, Tennessee, Inc. ("NEXTLINK") and the Southeastern Competitive Carriers Association ("SECCA").

Counsel for NEXTLINK and SECCA will be out of the state on June 8. Dana Shaffer, counsel for NEXTLINK, will also be out of the state on that day. Since this is a controversial issue and one likely to prompt questions from the bench and oral argument from

4 docket
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counsel, NEXTLINK and SECCA ask that consideration of these petitions to intervene be postponed until the next TRA meeting on June 22, 1999.

In support of this request, Petitioners respectfully note that the TRA postponed consideration of the intervention issue at the May 18 conference in order to allow BellSouth additional time to file a response to the "Supplement to Petitions to Intervene" filed by the Petitioners on May 7, 1999. Petitioners now ask the same consideration.¹

RESPONSE TO BELL SOUTH

The Supplement and attached documents filed by the Petitioners raise serious questions about BellSouth's use of the CSAs to thwart competition in the local exchange market. In response, BellSouth does not deny the effort but contends only that the company's "Premier Customer Program" ("PCP") described in the Supplement ended on January 31, 1997. *See* BellSouth response at p. 2.

BellSouth's statement that the CSA initiative ceased on January 31, 1997, is apparently based on a letter from a BellSouth salesman to a potential customer dated January 29, 1997. The letter is apparently intended to convince the customer that his opportunity to be a "Premier Customer" will be lost if he fails to sign a CSA with BellSouth within the next two days. (A copy of the letter is attached to BellSouth's response.)

¹ Since BellSouth took more than three weeks to file a response to the Supplement, it seems disingenuous now for BellSouth to accuse the Petitioners of "making a last ditch effort to delay approval" of these CSAs. BellSouth Response, at 1.

Other documents, however, indicate that the salesman's "deadline" is just a marketing ploy, and that, contrary to BellSouth's assertions, the PCP did not end on January 31, 1997. In an internal memorandum dated February 24, 1997, BellSouth instructed its salespeople to "continue to actively pursue agreements with TOP 500 customers" and to "expect to resume pro-actively proposing PCP agreements to all targeted customers within 30-60 days." A copy of this document, no. 000991, was attached to the Supplement filed by Petitioners.

BellSouth either didn't read the documents that were attached to the Supplement or, if they did, must have hoped that the TRA wouldn't.

The evidence from BellSouth's own documents strongly indicates that the dramatic increase in the number of CSAs filed by BellSouth since 1996 was not, as BellSouth has so often contended, a response to a lower-priced offer from a CLEC, but part of a wholesale campaign to persuade customers to sign long-term contracts before any competitor ever knocked on the customer's door.

BellSouth did this primarily by persuading customers to sign multi-year "volume and term" ("V&T") contracts. It is hard to imagine a more anti-competitive type of contract. In general, a V&T contract works as follows:

Based on the size of the customer's latest monthly bill from BellSouth, the V&T agreement binds the customer to continue paying that same amount, on an annualized basis, for the length of the contract whether or not the customer continues using that amount of service. In return, BellSouth gives the customer a small percentage discount from the tariffed price that the customer is currently paying. If the customer's bill later increases, so does the size of the discount, but if there is a "revenue shortfall," the customer has to make up the difference.

This type of contract does not, of course, have anything to do with BellSouth's costs of serving that particular customer. The only rational purpose of such an agreement is to take advantage of BellSouth's status as a monopoly, full-service provider and discourage the customer from ordering any type of service from a future competitor .

BellSouth's continuing efforts to use "volume and term" CSAs to lock-up the local exchange market deserve careful scrutiny by this agency. Based on BellSouth's response to the Supplement, there is no reason to believe that the four CSAs at issue here are not also part of that effort.

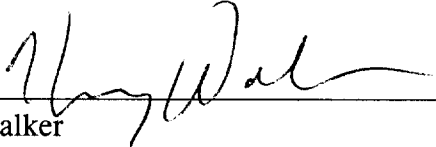
Finally, the Petitioners note that the Hearing Officer in docket 98-00559 (the investigation of BellSouth's CSAs) suggests in his "Third Report and Recommendation," issued on June 1, 1999, that if the TRA grants the petitions to intervene in the four, above-captioned dockets, those CSAs should be consolidated with the ongoing CSA investigation. That suggestion would also presumably apply to any other pending and future CSAs filed by BellSouth. The Petitioners support the Hearing Officer's recommendation.

During this consolidated investigation, the TRA may wish to consider allowing BellSouth's pending and future CSAs to become effective -- pending the final outcome of the proceeding -- as long as the CSAs meet the Authority's previously established criteria regarding price, duration, and termination provisions. If the TRA ultimately concludes that some or all of BellSouth's CSAs are illegal, anti-competitive, or otherwise contrary to the public

interest, the TRA has the authority to modify or abrogate those contracts at that time. See *New York Lumber Co. v. Tennessee Railway Co.*, 145 Tenn. 266, 295-296 (Tenn. 1921).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to the following counsel of record via U.S. Mail, postage prepaid, on this the 4th day of June, 1999.

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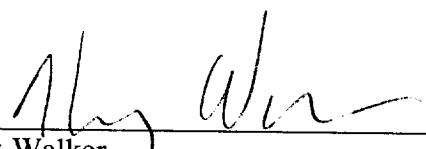
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