# BEFORE THE TENNESSEE REGULATORY AUTHORITY

## NASHVILLE, TENNESSEE

October 17, 2000

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| IN RE: | ) | |
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| BELLSOUTH TELECOMMUNICATIONS INC.'S | ) | **DOCKET NO.** |
| TARIFF FOR CONTRACT SERVICE | ) | **99-00599** |
| ARRANGEMENT (TN 99-3195-01) FOR FRAME | ) | |
| RELAY SERVICE | ) | |

## ORDER GRANTING APPROVAL OF BELLSOUTH CONTRACT SERVICE ARRANGEMENT (TN 99-3195-01)

This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference on September 28, 1999 on the tariff filing of BellSouth Telecommunications, Inc. ("BellSouth") for approval to offer Contract Service Arrangement No. TN 99-3195-01 ("CSA"). BellSouth filed Tariff No. 99-00599 on August 17, 1999, with a proposed effective date of September 16, 1999.

In TRA Docket Nos. 99-00210 and 99-00244, BellSouth provided evidence through the testimony of its witness, Randall L. Frame, that BellSouth based its decision to offer a customer a CSA on the presence of competitive offers. The Directors approved the CSAs in Docket Nos. 99-00210 and 99-00244 recognizing that BellSouth followed this policy when offering CSAs to customers. In the executive summary of this Tariff, BellSouth asserted that the offering of this

CSA to the customer in question was not arbitrary because the competitive offer standard was met.

On September 7, 1999, the Authority issued a data request to BellSouth in connection with the offering of the CSA in this docket. The Authority requested that BellSouth obtain an affidavit from the customer containing the following information: (1) the name of any competing providers making competitive offers to the customer; (2) the time period during which the competing providers identified in the previous request had negotiated the competitive offers; and (3) certification that BellSouth did not initiate negotiations regarding a contract service arrangement with the customer prior to this time period. On September 10, 1999, BellSouth responded to the Authority's data request by refusing to obtain such an affidavit from the customer.

The Directors of the Authority initially considered this matter at a regularly scheduled Authority Conference held on September 14, 1999. The Directors questioned BellSouth concerning its refusal to provide the requested affidavit from the customer. BellSouth responded by suggesting that it is difficult to obtain an affidavit of the type requested by the Authority from a customer before doing business with that customer. Chairman Malone made a motion to deny the CSA based on BellSouth's continued refusal to provide an affidavit from the customer. The motion was not acted on because BellSouth began to express a willingness to approach its customer. Following a lengthy discussion, the Directors unanimously agreed to defer a decision and suspend the CSA until the next conference in order to allow BellSouth to: (1) reconsider its

refusal to provide an affidavit or (2) submit some other type of evidence acceptable to the Authority.[1]

On September 22, 1999, BellSouth filed a letter signed by BellSouth personnel only. The letter set forth competitive alternative available to the customer. In addition, the letter stated that the signing BellSouth personnel "reviewed this information with the Customer to ensure that the information set forth in item numbers 2-4 accurately reflects [BellSouth's] discussions with the Customer."

The Directors considered the merits of this matter at a regularly scheduled Authority Conference held on September 28, 1999. A majority[2] of the Directors made the following findings and conclusions:

1.      The purpose of this CSA is to provide Frame Relay Service to the customer identified in the filing. Frame Relay utilizes a special network, separate from the public switched network, for providing customers with high-speed data transport between multiple locations.

2.      The term of this CSA is thirty-seven (37) months, and it is designed to provide Frame Relay Service at an overall rate comparable to competitive alternatives. Through this CSA, BellSouth is offering the customer a partial waiver of non-recurring charges as a discount.

3.      This CSA contains a termination provision that requires the customer to pay a charge if the customer terminates the CSA prematurely. The charge equals ninety percent (90%)

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[1] The Directors voted 3-0 to permit BellSouth an additional two weeks to provide some form of verification from the customer. Chairman Malone and Director Greer admonished BellSouth to provide within that time period "[an] affidavit or proper evidence as acceptable to our staff." Transcript of Proceeding, September 14, 1999, p. 41. Director Kyle stated that she would accept verification from the customer in some form less than an affidavit. *Id.* at 40.

[2] Chairman Malone moved that the CSA be denied. The motion did not receive a second. Chairman Malone opined that BellSouth's filings failed to provide sufficient information to determine whether the CSA complies with state contract law. In addition, Chairman Malone has consistently held that termination provisions amounting to a ninety percent (90%) buyout are so potentially anticompetitive as to warrant denial.

of the remaining monthly recurring contract payments as well as the repayment of the nonrecurring charges waived at the inception of the contract and contract preparation charges of $588.00.

4.      Despite the expressed preference of the Directors, the September 22, 1999 letter is not signed by the customer. Nevertheless, this CSA is distinguishable from CSAs BellSouth may file in the future in that BellSouth has concluded negotiations with this customer and would necessarily have to go back to the customer to obtain an affidavit.[3] For this reason, the Authority reluctantly accepts the September 22, 1999 letter as verification of competitive alternatives. On a going-forward basis, however, BellSouth must provide more convincing proof of competitive alternatives. BellSouth shall provide documentation with CSA filings establishing that the customer has received other competitive opportunities. The documentation shall be signed by the customer and must be acceptable to the Authority.

5.      No parties sought to intervene in this docket.

Based on the foregoing findings and conclusions, the majority of the Directors determined that the CSA in this docket should be granted. In addition, a different majority[4] of the Directors determined that BellSouth should clearly set forth the issues surrounding the termination provisions in future CSA filings to assist the Authority in making a determination as to whether such provisions comply with state contract law decisions. Also, BellSouth should clearly explain why the tariff may result in lower rates.

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[3] Chairman Malone agreed to accept the September 22, 1999 letter after noting that there are no CSAs currently pending before the Authority. In addition, Chairman Malone stated that BellSouth's repeated argument that going back to the customer is burdensome was quickly losing its persuasive effect.

[4] Director Kyle did not vote with the majority and stated that she would take each case on its own basis.
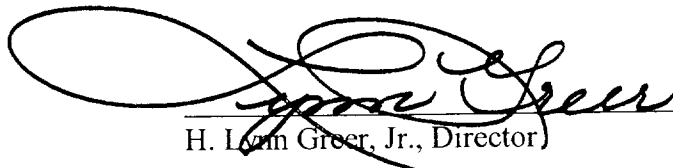
**IT IS THEREFORE ORDERED THAT:**

1.      BellSouth Telecommunications, Inc.'s Tariff No. 99-00599, which seeks approval

of Contract Service Arrangement No. TN 99-3195-01, is hereby granted.

2.      On a going-forward basis, BellSouth shall provide documentation with CSA

filings establishing that the customer has received other competitive opportunities.   The

documentation shall be signed by the customer and must be acceptable to the Authority.  Further,

BellSouth shall provide information in its CSA filings addressing the issue of whether the CSA

termination provisions comply with state contract law and explain why the tariff may result in

lower rates.

* * *
Melvin J. Malone, Chairman


H. Lynn Greer, Jr., Director


Sara Kyle, Director

ATTEST:


K. David Waddell, Executive Secretary


* * *   Chairman Malone voted against approval of the CSA, but in favor of requiring BellSouth to provide
documentation from customers evidencing other competitive opportunities and to demonstrate that the CSA may
result in lower rates and the termination provisions comply with state contract law decisions.