

**BellSouth Telecommunications, Inc.** 615 214-6301  
Suite 2101 Fax 615 214-7406  
333 Commerce Street  
Nashville, Tennessee 37201-3300

REC'D TN  
REGULATORY DIV.  
BELL SOUTH

JAN 18 PM 4 00  
Guy M. Hicks  
General Counsel

January 18, 2000

**VIA HAND DELIVERY**

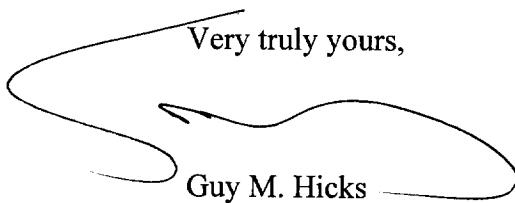
Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37245

Re: *Tariff to Offer a Special Promotion for Business Customers Subscribing to  
Exchange Lines with Hunting*  
Docket No. 99-00936

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Brief Addressing Its Promotional Offering Notification of December 2, 1999. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

  
Guy M. Hicks

GMH/jem

Enclosure

**FILE**

REC'D TO  
REGULATORY AUTH.

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

'00 JAN 18 PM 4 00

EXECUTIVE SECRETARY

**IN RE:      *TARIFF TO OFFER A SPECIAL PROMOTION FOR BUSINESS  
CUSTOMERS SUBSCRIBING TO EXCHANGE LINES WITH HUNTING***

**DOCKET NO. 99-00936**

**BELLSOUTH TELECOMMUNICATIONS, INC.'S BRIEF  
ADDRESSING ITS PROMOTIONAL OFFERING  
NOTIFICATION OF DECEMBER 2, 1999**

In compliance with the Directors' actions during the January 11, 2000 Director's Conference, BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this Brief addressing the promotional offering notification it provided the Tennessee Regulatory Authority ("TRA") on December 2, 1999. As explained below, dictionary definitions, FCC and TRA orders, and general business practices clearly show that BellSouth's offering is a promotion. Additionally, several of BellSouth's competitors rely upon the promotional offering provisions in their respective tariffs to run promotions (on little or no notice) which offer lower prices to customers who are willing to sign term contracts on or before a given date. The offering referenced in BellSouth's notification, therefore, is a valid promotion of the type that CLECs in Tennessee consistently are permitted to offer their customers.

Further, the Executive Secretary's letter of December 10, 1999 is of no legal effect because neither the Executive Secretary nor the Staff have the authority to reject a filing or to make substantive decisions regarding a filing. Thus BellSouth's notification of December 2, 1999 was valid and BellSouth's promotion went into

**FILE**

effect on December 6, 1999. The TRA, therefore, should lift the suspension of the promotion and immediately allow BellSouth to re-commence offering lower prices to Tennessee consumers.

## I. BACKGROUND

On December 2, 1999, BellSouth notified the TRA of a promotional offering that would be available to designated business customers from December 6, 1999 through March 4, 2000. See Exhibit 1. At 4:05 p.m. on December 10, 1999, BellSouth received a faxed copy of a letter from the Executive Secretary of the TRA. See Exhibit 2. This letter refers to BellSouth's December 2, 1999 notification and states that:

"The filing . . . seeks to establish termination provisions for discontinuing a contract under the terms of the promotion" and that the "application and consequences resulting from this provision seem to go well beyond the scope of a promotional offering;"

"[T]he Directors have deliberated issues pertaining to termination provisions on numerous occasions;" and

"[T]he proposed termination language should be presented to the Directors for public deliberation and not be allowed to go into effect upon one (1) days notice via a promotional offering."

See Exhibit 2 (emphasis added). The letter then states that "we do not consider this filing to be effective," and that "we are returning it to you because the effective date proposed is inconsistent with TRA Rule 1220-4-1-.04, TARIFF CHANGES REQUIRE 30 DAYS NOTICE TO THE COMMISSION." *Id.*

After responding to this letter on December 15, 1999, *see* Exhibit 3,<sup>1</sup> BellSouth received a letter dated January 7, 2000 stating that the Executive Secretary "did not render a decision on the termination provisions in BellSouth's Notice" but, instead, "stated that because the 'promotion' contained certain termination provisions, it required additional study and should be presented to the Directors for consideration under the same notice requirements applicable to Tariffs." *See* Exhibit 4. This letter concluded that "the 'promotion' was not deemed effective and was returned to BellSouth for filing in compliance with Authority rules." *Id.*

## **II. THE OFFERING DESCRIBED IN BELL SOUTH'S NOTIFICATION OF DECEMBER 2, 1999 IS A PROMOTION**

BellSouth is unaware of any definition of the term "promotion" in its tariff, in the tariffs of its competitors, in the TRA's rules, or in any Tennessee statute. In deciding whether the offering described in BellSouth's notification of December 2, 1999 is a promotion, therefore, it is instructive to consider dictionary definitions of "promotion," FCC and TRA orders addressing promotions, the use of promotional offerings in unregulated industries, and the use of promotional offerings by CLECs in

---

<sup>1</sup> BellSouth's response clarifies that "[t]he discounts provided under the promotion apply only to rates for hunting." *See* Exhibit 3 at 1, n.1. The fact that the promotional discounts apply to the regulated hunting services on a customer's business bill is clearly stated in the contract signed by customers who choose to participate in the promotion. *See* BellSouth Small Business Program Subscriber Agreement at ¶3. Copies of these contracts will be filed under separate cover upon entry of an appropriate protective order in this docket.

Tennessee. As explained below, consideration of these matters shows that BellSouth's offering clearly is a promotion.

**A. BellSouth's offering is consistent with dictionary definitions of "promotion."**

BellSouth may offer "special promotions of new or existing services or products . . . ." BellSouth Tariff §A2.10.A.1. Black's Law Dictionary defines the term "promote" as "to encourage or advance," *see* Black's Law Dictionary 1093 (5<sup>th</sup> ed. 1979), while Webster's defines the term "promotion" as "the furtherance of the acceptance and sale of merchandise through advertising, publicity, or discounting." *See* Webster's Ninth New Collegiate Dictionary 942 (1987). BellSouth's offering provides significant discounts from its tariffed hunting rates to qualifying customers who sign a term contract on or before March 4, 2000. This offering, which provides lower prices for a competitive service, clearly is an effort to encourage and further the acceptance of BellSouth's hunting service through discounts. BellSouth's offering, therefore, is entirely consistent with dictionary definitions of "promotion."

**B. BellSouth's offering is consistent with the FCC's treatment of promotions in its August 8, 1996 Interconnection Order and with the TRA's treatment of promotions in its final order in the AT&T/MCI Arbitration Proceedings.**

The FCC's treatment of promotions in its August 8, 1996 Order in Docket No. 96-325 makes it clear that promotions are not limited to waivers or discounts that expire in ninety days or less. In deciding whether promotions are subject to the resale obligations in the 1996 Act, the FCC concluded that "no basis exists for

creating a general exemption from the wholesale requirement for all promotional or discount service offerings made by incumbent LECs." FCC Order at ¶948 (emphasis added). Instead, the FCC concluded that while "short-term promotional prices" are not subject to the wholesale rate obligation, long-term promotional prices are subject to the wholesale rate obligation. See FCC Order at ¶949 (emphasis added). The FCC then set guidelines for "determin[ing] when a promotional price ceases to be 'short term' and must therefore be treated as a retail rate" that is subject to the wholesale discount.<sup>2</sup> *Id.* at ¶950.

Far from prohibiting long-term promotions, therefore, the FCC clearly recognizes that incumbents like BellSouth may offer either short-term or long-term promotions. The FCC simply concluded that long-term promotions are subject to the resale obligations of the 1996 Act, while short-term promotions are not. Consistent with this FCC ruling, the TRA's final order in the AT&T/MCI arbitration proceedings acknowledges that promotions may be either short-term or long-term, and it establishes "terms and conditions on short-term and long-term promotions." See Second and Final Order of Arbitration Awards, Docket Nos. 96-01152 and 96-01271 at 14 (January 23, 1997) (emphasis added).

---

<sup>2</sup> In addition to being available to all customers who meet the qualifying criteria set out in the December 2, 1999 notification, BellSouth's promotional offering also was available for resale at wholesale rates. Once the suspension is removed, the promotion will continue to be available to all customers who meet the qualifying criteria, and it will continue to be available for resale.

**C. BellSouth's offering is consistent with promotional offerings in unregulated industries.**

Competitors in many unregulated industries offer special prices that are contingent upon a customer's signing a term contract on or before a specific date. From January 14, 2000 until January 20, 2000, for instance, h.h.Gregg customers will receive a "\$400 mail-in rebate with the purchase of a computer package or notebook and a 3 year (36 months) subscription for CompuServ Internet Service or MSN Internet Service at \$12.95 per month." See Exhibit 5 (emphasis added). Similarly, Earl Dunn customers can enjoy a 2.9% APR and other specified benefits if they sign a "36 month smart lease" between January 14, 2000 and January 17, 2000. See Exhibit 6. In each instance, customers have a limited time to take advantage of special promotional prices, and customers must sign three-year contracts to receive the promotional prices.

**D. BellSouth's offering is consistent with many promotional offerings CLECs have filed with the TRA and offered their customers in Tennessee.**

ICG Telecom Group, Inc. ("ICG"), MCImetro ACCESS TRANSMISSION SERVICES, INC. ("MCImetro"), NEXTLINK Tennessee, L.L.C. d/b/a NEXTLINK ("NEXTLINK"), TCG Midsouth, Inc. ("TCG Midsouth"), and Time Warner Communications of the Mid-South, L.P. ("Time Warner")<sup>3</sup> each have filed local exchange service tariffs in Tennessee which allow them to offer promotions to their

---

<sup>3</sup> This list is for illustrative purposes only and is not intended to be an exhaustive list of all CLECs whose tariffs permit promotional offerings or who have offered special promotions in Tennessee.

customers. The terms of these tariffs are similar to the terms of BellSouth's promotional tariff:<sup>4</sup>

ICG Tariff No. 1, §9.3: The Carrier may from time to time engage in special promotional trial service offerings of limited duration (not to exceed ninety days on a per customer basis for non-optional, recurring charges) designed to attract new subscribers or to increase subscriber awareness of a particular tariff offering. Requests for promotional offerings will be presented to the Commission for its review in accordance with rules and regulations established by the Commission, and will be included in the Carrier's tariff as an addendum to the Carrier's price lists.

MCImetro Tariff No. 2, §4.1: The Company, from time to time, may make promotional offerings of its services which may include waiving or reducing the applicable charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made. (Emphasis added).

NEXTLINK Tariff No. 1, §4.1: The Company, from time to time, may make promotional offerings of its services which may include waiving or reducing the applicable charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made. Promotions will be filed with the Tennessee Regulatory Authority for approval on one day's notice. (Emphasis added).

TCG Midsouth Tariff No. 1, §3.15: The Company may establish temporary promotional programs to introduce present or potential Customers to a service not previously received by Customers. During specific promotional periods, an offer may be made to reduce non-recurring charges on a non-discriminatory basis, up to the full amount, for optional products and services. Unless specifically approved elsewhere, this offer will not apply to single basic exchange access lines. Written notice of such offerings will be provided to the staff of the Tennessee Regulatory Authority prior to the date upon which the offer is to commence. (Emphasis added).

---

<sup>4</sup> Copies of the tariffs and promotional offerings referenced in this brief are attached as Collective Exhibit 7. BellSouth obtained these materials from the Web page hosted by Tele-Tech Services.



Time Warner Tariff No. 2, §4.1: The Company, from time to time, may make promotional offerings of its services which may include waiving or reducing the applicable charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made. Promotions will be filed with the Tennessee Regulatory Authority for approval on one day's notice. (Emphasis added).

These competitors apparently do not believe their promotional tariffs prohibit the use of term contracts or limit the duration of a promotion to ninety days. To the contrary, these five competitors, along with AT&T Communications of the South Central States ("AT&T"),<sup>5</sup> have offered numerous promotions which have required customers to sign term contracts on or before a specific date in order to receive the benefits of the promotion. Many such promotions have contained termination liability provisions. Among the promotions these competitors have offered customers in Tennessee are the following:

On December 23, 1996, MCImetro issued a "Local Services Investor Promotion – Memphis" that became effective January 22, 1997 and continued until January 26, 1997. Participating customers received, among other things, monthly credits ranging from \$50 to \$8,000. The amount of the monthly credit depended on the annual volume commitment the customer selected (ranging from \$6,000 to \$480,000 per year) and the term of service the customer selected (ranging from one-year term contracts to three-year term contracts). The promotion also included a range of termination liability provisions. MCImetro Tariff No. 2, §4.6.

On April 21, 1997, Time Warner issued a "Local Exchange Pricing" promotion that became effective May 14, 1997 and continued until November 14, 1997. Participating customers received hunting, touch tone, and "Facility Charge" free of charge and they paid monthly rates of \$33.50 for "Trunk Charge." These customers were entitled to

---

<sup>5</sup> While AT&T has offered several promotional offerings through Section L4.2 of its local exchange tariff, BellSouth is unaware of any provision in AT&T's Tennessee local exchange tariff that expressly addresses promotional offerings.

"additional discounts" of 10%, 15%, and 20% if they signed term agreements of one year, two years, and three years respectively. Time Warner Tariff No. 2, §4.4.

On November 24, 1997, TCG Midsouth issued a "Thank You For Trying Us" Promotion that became effective December 24, 1997 and continued until March 1, 1998. Participating customers received "a credit equal to the first month facility charges" for specified services. Customers were required to choose "a minimum term commitment of one year," and "[i]f the Customer terminates service before the end of the commitment period, the Customer will be responsible for early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment." TCG Midsouth Tariff No. 1, §5.8.3.

On November 24, 1997, TCG Midsouth issued a "Fall Into Savings Promotional Offering" that became effective December 24, 1997 and continued until March 1, 1998. Participating customers received "a credit equal to the installation charges" for specified services. Customers were required to choose "a minimum term commitment of one year," and "[i]f the Customer terminates service before the end of the commitment period, the Customer will be responsible for installation charges waived under this program. The customer will also be charged early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment." TCG Midsouth Tariff No. 1, §5.8.4.

On December 17, 1997, MCImetro issued a "Local Conversion" Promotion that became effective January 16, 1998 and continued until January 31, 1998. Participating customers received credits of up to \$7,500 per location upon ordering specified services. Under this promotion, "[i]f the customer discontinues service prior to the twelfth month of service, they will be billed and required to pay the credits received from this promotion." MCImetro Tariff No. 2, §4.7.

On June 24, 1998, AT&T issued a "COMBO Promotion" that became effective July 1, 1998 and continued until September 30, 1998. Participating customers received a \$750 credit "payable in the 4th full billing month after enrollment." These customers then had "12 consecutive billing months to achieve the \$8,000 usage commitment, per billed telephone number." AT&T Tariff §L4.2.

MCImetro ran an "Install Waiver Promotion" beginning November 12, 1998 and continuing until October 31, 1999. Participating customers received a waiver of installation charges for specified services. Additionally, "[t]o receive the benefits of this promotion, customers must commit, at the time of converting to MCImetro Local Service, to at least a one year term commitment," and "[c]ustomers who terminate their term plan prior to the expiration of the committed term will be charged for the waived installation charges." MCImetro Tariff No. 2, §4.11.

On February 12, 1999, AT&T issued a "'Welcome to AT&T Local Service' Promotional Program" that became effective the next day and continued until June 30, 1999. Participating customers received various credits for installation-related services, and "[i]f the customer terminates service before the end of the commitment period, the Customer will be responsible to pay any of the charges credited under this program." AT&T Tariff §L4.2.

On February 12, 1999, AT&T issued a "'PIC Change Charge' Promotional Program" that became effective the next day and continued until June 30, 1999. According to the terms of this promotion, qualifying new and existing customers received "a credit equal to the PIC Change Charge for each line or trunk that the customer switches to AT&T." Under this promotion, "[i]f the customer terminates service before the end of the commitment period, the Customer will be responsible to pay any of the charges credited under this program." AT&T Tariff §L4.2.

On February 16, 1999, ICG issued a "Digital Access Services Promotion" that became effective the same day and continued until May 1, 1999. Participating customers "who enter[ed] into a contract agreement for 'Plan A' service" received a discount off the "Central Office Port, Optional 1 monthly recurring charge." The amount of the discount was 45% to 55%, "depending upon the term of the contract agreement." ICG Tariff No. 1, §10.4.

On February 16, 1999, ICG issued an "Installation Credit Promotion" that became effective the same day and continued until August 16, 1999. Existing customers and new customers that switched their local exchange service to ICG from an ILEC received non-recurring installation credits "on a case by case basis . . . ." The terms also provided that "[a]rrangements for this promotion will be developed on a case by case basis (ICB) in response to the Company's need to meet

competition and will be offered to the Customer in writing on a non-discriminatory basis." ICG Tariff No. 1, §10.5.

On February 24, 1999, AT&T issued a "Digital Link Flat Fee Calling Promotion" that became effective the next day and continued until April 30, 1999. Participating customers paid "a one-time DOD flat rate usage fee of \$4,960 per T1.5 facility for twelve months of DOD usage," and customers who subscribed "to AT&T Digital Link's DOD Service only [paid] a one-time DOD flat rate usage fee of \$5,580.00 per T1.5 facility for twelve months of DOD usage . . . ." The terms also provided that "[n]o portion of the charge paid pursuant to this promotion will be refunded if the customer terminates AT&T Digital Link Service prior to the end of the twelve month period." AT&T Tariff §L4.2.

On June 3, 1999, MCImetro issued a "Lit Building Promotion" that became effective July 3, 1999 and continued until August 1, 1999. Participating customers were required to enroll in "at least a one-year, \$100 per month term/volume commitment" in order to receive specified discounts during specified months of the selected term. Customers apparently could choose a term commitment from one year to five years. MCImetro Tariff No. 2, §4.12.

On July 14, 1999, AT&T issued a "Digital Link 'PR' \$500.00 Bill Credit Promotion" that became effective the next day and continued until December 31, 1999. Participating customers received "a \$500 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment." These customers also agreed "to bill a minimum of \$600 in combined direct dial outbound IntraLATA usage, Short-Haul Dedicated IntraLATA usage and AT&T Digital Link usage, per participating BTN, during the 12-month period after enrollment in this promotion." AT&T Tariff §L4.2.

On July 14, 1999, AT&T issued a "Digital Link 'PR' \$750.00 Bill Credit Promotion" that became effective the next day and continued until December 31, 1999. Participating customers received "a \$750 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment." These customers also agreed "to bill a minimum of \$850 of combined IntraLATA and AT&T Digital Link usage, per BTN" and that they had 12 consecutive billing months to achieve the \$850.00 usage commitment, per BTN." AT&T Tariff §L4.2.

On September 15, 1999, NEXTLINK informed the TRA by letter of a promotion that it would run on a building-by-building basis in Nashville and Memphis for a period of 90 days in each building. Participating customers are entitled to one month, two months, and three months free service if they sign a term agreement of one year, two years, and three years respectively. Additionally, as a "**BONUS**," customers are urged to "sign up now and get your **Long Distance for 6¢ per minute**." (emphasis in original).

On January 5, 2000, AT&T issued a "Digital Link PR" Promotion that became effective the next day and continues until June 30, 2000. Participating customers received "a \$500 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment." Participating customers also agreed "to bill a minimum of \$600 in combined direct dial outbound IntraLATA usage, Short-Haul Dedicated IntraLATA usage and AT&T Digital Link usage, per participating BTN, during the 12-month period after enrollment in this promotion." AT&T Letter dated January 5, 2000.

Clearly, BellSouth's competitors have used their promotion tariffs to offer promotions which require customers to sign term contracts on or before a specific date in order to receive the benefits of the promotion. Although these competitors have notified the TRA of these promotional offerings (in some instances, for approval on one day's notice),<sup>6</sup> BellSouth is unaware of the Executive Secretary or Staff either having deemed that any of these promotional offerings were not in effect or having suggested that any of these promotional offerings should be "presented to the Directors for public deliberation and not be allowed to go into effect . . . via a promotional offering." *Cf.* Exhibit 2.

The same definition of "promotion" that has permitted these competitors to offer these promotions in Tennessee over the past three years allows BellSouth to

---

<sup>6</sup> See Nextlink Tariff No. 1, §4.1; Time Warner Tariff No. 2, §4.1.

offer the promotion at issue in this docket. BellSouth, therefore, should be able to respond to the competition by using its promotion tariff to offer its customers the same types of promotions its competitors are permitted to offer their customers. BellSouth also should be able to use the one-day notice provision in its promotion tariff to respond to the competition as quickly as other service providers are allowed to respond to the competition. Clearly, the same definitions and the same time frames should be applied to all competitors in the same manner.

**III. BELLSOUTH'S NOTIFICATION OF DECEMBER 2, 1999 COMPLIES WITH THE REQUIREMENTS APPLICABLE TO A PROMOTIONAL OFFERING**

Because the offering referenced in BellSouth's notification of December 2, 1999 is a promotion, the thirty-day notice provision cited in the letter of December 10, 1999 does not apply. Instead, BellSouth's Tariff provides that BellSouth "may offer special promotions of new or existing services or products upon 1 day notice to the Authority." BellSouth Tariff §A2.10.A.1. According to the Tariff, BellSouth's notification to the TRA "will include the time period during which the promotion will be conducted as well as the terms and conditions of the promotion." *Id.* BellSouth's notification of December 2, 1999 meets these criteria.

First, the promotional offering involves discounts off the tariffed rates for existing services or products. Second, the notification states the time period during which the promotion will be conducted and the terms and conditions of the promotion. Finally, the notification provides the TRA with the requisite "1 day notice." BellSouth's notification, therefore, was proper and effective, and BellSouth

had the authority to begin offering the promotion to its customers as of December 6, 1999.

**IV. NEITHER THE EXECUTIVE SECRETARY NOR THE STAFF HAS THE STATUTORY AUTHORITY TO REJECT A FILING, DEEM A PROMOTION NOT TO BE IN EFFECT, OR OTHERWISE PROHIBIT BELLSOUTH FROM OFFERING A PROMOTION.**

The authority of the Directors to consider and publicly deliberate the merits of a promotional offering, even after it has gone into effect upon one-day's notice, is not at issue in this docket. Whether the Executive Secretary or the Staff has the authority to reject a filing or to privately render a decision on the merits of a filing, however, is at issue. Clearly, neither the Executive Secretary nor the Staff has such authority.

**A. The Executive Secretary's administrative and ministerial powers do not include the power to reject notifications or other filings.**

The Executive Secretary's letter of December 10, 1999 states "we are returning [BellSouth's notification] to you because the effective date proposed is inconsistent with TRA Rule 1220-4-1-.04, TARIFF CHANGES REQUIRE 30 DAYS NOTICE TO THE COMMISSION." See Exhibit 3. This letter clearly purports to reject the filing altogether, return it to BellSouth, and instruct that "[s]hould you desire to refile the promotion with the termination provisions, please revise the effective date to be in compliance with TRA rules." See Exhibit 3. A case decided by the Tennessee Court of Appeals the day after BellSouth filed its notification, however, makes it clear that neither the Executive Secretary nor the Staff has the authority to reject a filing in this manner.

In *Woods v. World Truck Transfer, Inc.*, 1999 WL 1086462 (Tenn. Ct. App. Dec. 3, 1999) (copy attached as Exhibit 8), the Plaintiffs attempted to file summonses and a complaint the day before their action would have been barred by the statute of limitations. The Clerk's office, however, "declined to accept or file the summonses accompanying the complaint because they were prepared on photocopies of the original printed summons form used by the circuit courts in Davidson County." *Id.* at \*1. The Defendants then argued that the statute of limitations had run because the Plaintiffs had not filed the summonses within the time required by the Tennessee Rules of Civil Procedure. The trial court agreed with the Defendants and dismissed the Plaintiff's case.

The Court of Appeals, however, reversed that decision because "[w]e have determined that the trial court clerk erred by declining to accept and file these summonses." *Id.* at \*2. In reaching this conclusion, the Court explained that:

Trial court clerks hold a public office established by and defined by the Constitution of Tennessee and statutory law. They serve as the principal administrative aides to the trial courts.

\* \* \*

A trial court clerk is a ministerial, as opposed to judicial, officer. Included among a clerk's ministerial duties are accepting and filing pleadings and documents, and issuing summonses. As a ministerial officer, a trial court clerk does not have the authority to reject pleadings, papers, and other documents for lack of conformity with formal requirements. This task is more properly suited to judicial officers.

\* \* \*

When presented with an apparently non-conforming paper, a trial court clerk should stamp it received or filed and then should notify the filing



party of the problem with the paper. The clerk should leave it to others to question the legal sufficiency of any paper tendered for filing.

*Id.* at \*4 (emphasis added).

Analogously, the Executive Secretary is designated as "the chief administrative officer" of the TRA. See T.C.A. §65-1-209. Accordingly, despite the administrative and ministerial powers granted by section 65-1-209, the Executive Secretary "does not have the authority to reject pleadings, papers, and other documents for lack of conformity with formal requirements. This task is more properly suited to [the Directors of the TRA]." *Cf. Woods* at \*4. While the Executive Secretary and the Staff may convey their concerns and recommendations to the Directors, they clearly have no authority to reject a filing or deem it ineffective on their own accord.

**B. Neither the Executive Secretary nor the Staff has the statutory authority to determine whether or not an offering is a promotion.**

As explained above, even if the letter of December 10, 1999 purported to rely on the Executive Secretary's administrative and ministerial powers, it would not have been a proper exercise of those powers. The letter, however, states "we are returning [the filing] to you because the effective date proposed is inconsistent with TRA Rule 1220-4-1-.04, TARIFF CHANGES REQUIRE 30 DAYS NOTICE TO THE COMMISSION." See Exhibit 3 (emphasis added). Clearly, this letter goes well beyond attempting to exercise administrative and ministerial powers and purports to make a substantive decision regarding BellSouth's filing.

Whether BellSouth was required to provide thirty days' notice or one days' notice to the TRA depends on the substantive nature of the offering described in the December 2, 1999 notification. If the offering is a tariff, it required thirty days' notice. If the offering is a promotion, it required one day's notice. By relying on the TRA's tariff notification rule in rejecting BellSouth's filing, the December 10, 1999 letter necessarily makes the substantive determination that the offering is not a promotion. Neither the Executive Secretary nor the Staff, however, are authorized to make such a substantive ruling.

The Executive Secretary's statutory authority is limited to administering the management and operations of the TRA. Section 65-1-204, for example, requires the Executive Secretary to administer any "policies for the efficient and economical internal management of the authority" that are established by the TRA. Section 65-1-209 designates the Executive Secretary as "the chief administrative officer" of the TRA and authorizes the Executive Secretary to conduct business such as: employing and supervising personnel (subject to the TRA's review); keeping a record of the TRA's proceedings and transactions; administering the operating procedures of each division of the TRA; ensuring that each division executes its duties and responsibilities; supervising the expenditure of funds; recommending rules and policies necessary to provide for the internal management of the authority; and performing other administrative and ministerial duties as required by the TRA. Nowhere does any statute suggest that the Executive Secretary -- or any other employee of the TRA -- has the authority to decide whether or not a filing is a

promotion. BellSouth's notification, therefore, should have been accepted and filed with the TRA on December 2, 1999.

Moreover, BellSouth's tariff allows it to begin offering promotions "upon 1 day notice to the Authority." BellSouth Tariff §A.2.10.A.1. As such, the tariff is analogous to the statute providing that if the authority has not concluded its investigation of a proposed rate increase within six months of the date it was filed, "the utility may place the proposed increase, change or alteration, or any portion thereof, in effect at any time thereafter prior to the final authority decision thereon upon notifying the authority, in writing, of its intention so to do . . . ." T.C.A. §65-5-203(b)(1). While the Directors retain the authority to continue considering such an increase and to render a final decision even after the increase is placed into effect, it is clear that an increase placed into effect under this statute cannot be deemed ineffective by the Executive Secretary or the Staff.

Analogously, after one day's notice, BellSouth is permitted to offer special promotions of new or existing services or products to its customers. The Directors have the authority to review the promotion after it goes into effect, but the promotion remains in effect until the TRA renders a decision to the contrary. The Executive Secretary and the Staff, therefore, have no authority to deem such a promotion ineffective. Thus BellSouth's promotion went into effect on December 6, 1999, and it remained in effect until suspended by the Directors during the January 11, 2000 conference.

**C. Tennessee Statutes do not authorize the TRA to delegate to the Executive Secretary or to the Staff the authority to determine whether BellSouth's offering is a promotion.**

As an administrative agency, the TRA has only the powers conferred upon it by statute, "and any action which is not authorized by the statutes is a nullity." *Madison Loan & Thrift Co. v. Neff*, 648 S.W.2d 655, 657 (Tenn. Ct. App. 1982); *General Portland v. Chattanooga-Hamilton County Air Pollution Control Board*, 560 S.W.2d at 910, 913 (Tenn. Ct. App. 1976). Although statutes from which agencies derive their authority often "should be construed liberally because they are remedial, the authority they vest in an administrative agency must have its source in the language of the statutes themselves." *Wayne County v. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 282 (Tenn. App. 1988). Applying these principles to the former Public Service Commission, the Court of Appeals has noted that "the powers of the Commission must be found in the statutes. If they are not there, they are non-existent." *Deaderick Paging v. Public Service Com'n*, 867 S.W.2d 729, 731 (Tenn. App. 1993).

Consistent with these principles, an administrative agency may delegate its powers to an employee of the agency only to the extent that such delegation is permitted by statute. See *Davric Maine Corp. v. Maine Harness Racing Comm'n*, 732 A.2d 289, 295 (Me. 1999). Cf. Tenn. Atty. Gen. Op. 98-177 (August 28, 1998) (copy attached as Exhibit 9) (stating that "this Office is not aware of any statutory authority that would enable [the TRA] to delegate its duty to administer the [Universal Service] Fund."). Many Tennessee statutes expressly authorize an

administrative agency or a state official to delegate powers and duties to employees. *See, e.g.,* T.C.A. §8-27-102(c) ("the state insurance committee has the authority to delegate to a subcommittee or to staff the ability to handle and resolve disputes, including appeals, regarding benefits of the insurance plan"); §53-2-113 ("All authority vested in the commissioner [of agriculture] by virtue of the provisions of this chapter may with like force and effect be executed by such employees of the department of agriculture as the commissioner may from time to time designate for such purpose"); §64-1-1103(6) (allowing the board of the West Tennessee river basin authority to "delegate any of its powers and duties to the staff assigned to it within the department"). No such statutes, however, allow the TRA to delegate to its employees the authority to render binding substantive decisions.

In fact, state statutes make it clear that the employees of the TRA cannot render decisions on behalf of the TRA. Section 65-4-117(1), for example, provides that the TRA has the power to investigate written complaints involving any matter concerning any public utility. Section 65-4-119, in turn, allows the TRA to assign any employee to "investigate, hear, and wherever possible, adjust" certain complaints. The legislature, however, made it clear that these employees have no authority to render a final decision regarding such complaints. Instead, if they are "unable to effect a satisfactory adjustment" of such a complaint, they must certify it to the TRA along with their recommendations. T.C.A. §65-4-119. The TRA must then hold a hearing and "make its final order, which shall be binding upon the parties

to any such controversies." *Id.* Clearly, it is the Directors -- not the employees of the TRA -- that retain all decision-making authority.

Even when the TRA appoints an employee to serve as a hearing examiner pursuant to section 65-2-111 (which did not occur in this instance),<sup>7</sup> it is the Directors who retain final decision-making authority. An employee appointed as hearing officer is authorized to "make a proposal for decision in writing" to the TRA, T.C.A. §65-2-111, but before the TRA enters its final order, "the members thereof shall personally consider the entire record, or such portion thereof as may be cited by the parties, and shall make its decision . . . ." *Id.* As the Court of Appeals has noted in interpreting this statute and the analogous provisions of the UAPA,

The [TRA] is not simply acting as an error-correcting body when it reviews a proposed or initial order. It must personally review the relevant portions of the administrative record, and then it must reach its own decision.

---

<sup>7</sup> Even if the TRA had appointed the Executive Secretary or a member of the Staff to serve as a hearing officer with regard to BellSouth's notification, the hearing officer's actions would be governed by the Open Meetings Act, T.C.A. §§8-44-101 *et. seq.* See *Dorrier v. Dark*, 537 S.W.2d 888, 892 (Tenn. 1976) ("It is clear that for the purposes of [the Open Meetings Act], the legislature intended to include any board, commission, committee, agency, authority or any other body . . . whose origin and authority may be traced to the State . . . and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the people in the governmental sector."). This Act provides that "the formation of public policy and decisions is public business and shall not be conducted in secret," and it requires all meetings of "any governing body" to be "public meetings open to the public at all times." T.C.A. §§8-44-101, -102. The decisions set forth in the December 10, 1999 letter -- which purported to deprive Tennessee consumers of the benefits of lower prices for a competitive service -- were made in private and without notice. Even if the Executive Secretary or a member of the Staff had been appointed as a hearing officer to determine whether BellSouth's offering was a promotion, the decisions embodied in the December 10, 1999 letter would be void and of no effect. See T.C.A. §8-44-105 ("Any action taken at a meeting in violation of this part shall be void and of no effect . . .").

*Jackson Mobilphone Co. v. Public Service Commission*, 876 S.W.2d 106, 111 (Tenn. Ct. App. 1994). Clearly, neither the Executive Secretary nor the Staff were authorized to decide that BellSouth's filing was not a promotion and to deem the promotion not to be in effect.

**V. THE TRA SHOULD ALLOW BELL SOUTH TO RESUME OFFERING ITS PROMOTION TO CUSTOMERS.**

The promotional filings summarized in Section II.D of this brief demonstrate that local exchange competition in the Tennessee business market is fast, furious, and pervasive. Competitors are ready, willing, and able to develop and implement creative promotions that provide customers a limited amount of time to enter term contracts which provide lower rates on numerous services at a moment's notice. It is crucial, therefore, for all service providers to share the same ability to quickly and effectively respond to competition and provide even more benefits to Tennessee consumers.

In making its promotional offering, BellSouth is using the same definition of "promotion" that has permitted numerous CLECs to offer similar promotions in Tennessee over the past three years. It is using a one-day notice provision that is similar to the notice provisions these CLECs use when offering their promotions. In purporting to delay the implementation of BellSouth's promotional offering after allowing so many similar filings to become effective without delay, the letter of December 10, 1999 clearly violates Tennessee's public policy that "the regulation of telecommunications services and telecommunications services providers shall

protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider . . . ." See T.C.A. §65-4-123. *Accord, Sanifil of Tennessee, Inc. v. Solid Waste Disposal Control Board*, 907 S.W.2d 807, 811 (Tenn. 1995) ("While having the power to act does not mandate action, we find that in the case of regulations affecting private business, every effort must be made to apply regulations consistently and fairly."). The TRA, therefore, should allow BellSouth to resume offering this promotion immediately.

In the meantime, BellSouth is sensitive to the TRA's desire to appropriately balance the needs of local service providers to quickly respond to competition with the TRA's ability to review notification of promotional offerings. BellSouth would appreciate the opportunity to work with the TRA and other local service providers to develop a promotional filing procedure which applies equally to all service providers and which appropriately balances these interests. Until such a procedure is developed and implemented, however, BellSouth should be allowed to use its promotional tariff to implement its promotional offerings in the same manner in which its competitors are allowed to implement their promotional offerings.

## **VI. CONCLUSION**

BellSouth's letter of December 2, 1999 was a valid notification of an appropriate promotional offering. In purporting to reject BellSouth's notification and deem its promotion not to be in effect, the Executive Secretary and the Staff acted without statutory authority. Because there is no basis for continuing the suspension of this promotional offering, the TRA immediately should lift the suspension and



allow Tennessee consumers the opportunity to enjoy lower rates for a competitive service.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks

Patrick W. Turner

333 Commerce Street, Suite 2101

Nashville, Tennessee 37201-3300

(615) 214-6301

### CERTIFICATE OF SERVICE

I hereby certify that on January 18, 2000, a copy of the foregoing document was served on counsel for the petitioner and the entities seeking intervention, via the method indicated, addressed as follows:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

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

A handwritten signature in black ink, appearing to be 'R. Collier', is written over a horizontal line.

**EXHIBIT 1**



BellSouth Telecommunications, Inc.  
Room 22A1  
333 Commerce Street  
Nashville, Tennessee 37201-3300

Regulatory

December 2, 1999

TARIFF FILING

DEC 0 1999

99 936

Ms. Darlene Standley  
Regulatory Manager  
Tennessee Regulatory Authority  
360 James Robertson Parkway  
Nashville, TN

Dear Ms. Standley:

From December 6, 1999 through March 4, 2000 a promotional offer will be available to business customers with less than \$10,000 per month per account and who have 4-20 flat rate or Business Plus exchange lines with hunting. If a business customer meets these criteria, he can sign a contract for these services and receive a discount per the following:

<u>Length of Contract</u>	<u>Discount</u>
12 months	40%
24 months	60%
36 months	80%

If a customer terminates the contract prior to its expiration date, the discounts given must be repaid and will appear as a charge on their telephone bill. In addition, if lines are added during the 90-day promotional period, line connection charges will be waived for the added lines.

Please call me on 214-3815 if additional information is needed.

Yours truly,

Manager

## **EXHIBIT 2**

Rec'd 4:05 PM.  
12/10/99

# TENNESSEE REGULATORY AUTHORITY



Melvin Malone, Chairman  
Lynn Greer, Director  
Sara Kyle, Director

460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

December 10, 1999

Mr. Charles L. Howorth, Jr.  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Nashville, TN 37201-3300

Post-It® Fax Note	7671	Date	# of pages 2
To	Charles Howorth	From	David Foster
Co./Dept.		Co.	
Phone #		Phone #	
Fax #		Fax #	

Dear Mr. Howorth:

On December 2, 1999, BellSouth filed a special promotion for business customers subscribing to flat rate or Business Plus exchange lines with hunting (copy attached).

The proposed discounts for the ninety (90) day enrollment period seem to fall within the parameters of a promotional offering as set forth in GSST A2.10, *Special Promotions*. The filing, however, also seeks to establish termination provisions for discontinuing a contract under the terms of the promotion. The application and consequences resulting from this provision seem to go well beyond the scope of a promotional offering. Further, as you well know, the Directors have deliberated issues pertaining to termination provisions on numerous occasions. From these discussions, it is clear that the proposed termination language should be presented to the Directors for public deliberation, and not be allowed to go into effect upon one (1) days notice via a promotional offering.

Accordingly, we do not consider this filing to be effective. Further, we are returning it to you because the effective date proposed is inconsistent with TRA Rule 1220-4-1-.04, *TARIFF CHANGES REQUIRE 30 DAYS NOTICE TO THE COMMISSION*. Should you desire to refile the promotion with the termination provisions, please revise the effective date to be in compliance with TRA rules.

If you have any questions regarding this matter, contact David Foster at 741-2904, extension 188.

Sincerely,

David Waddell,  
Executive Secretary

## **EXHIBIT 3**



BellSouth Telecommunications, Inc. 615 214-6520  
Suite 2104 Fax 615 214-8858  
333 Commerce Street  
Nashville, Tennessee 37201-3300

Charles L. Howorth, Jr.  
Regulatory Vice President

December 15, 1999

**VIA HAND DELIVERY**

Mr. David Waddell, Executive Secretary  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Re: BellSouth Hunting Promotion

Dear Mr. Waddell:

On December 2, 1999, BellSouth notified the Tennessee Regulatory Authority ("TRA") of a promotional offer available from December 5, 1999 through March 4, 2000. Our letter states that the promotion is available to "business customers with less than \$10,000 per month per account and who have 4-20 flat rate or Business Plus exchange lines with hunting," and it sets forth the discounts from the tariffed rates for hunting that are associated with 12-month, 24-month, and 36-month contracts under the promotion.<sup>1</sup> At approximately 4:05 p.m. on December 10, 1999, we received a faxed letter from you which states, in part, "we do not consider this filing to be effective."

As you probably know, our competitors are quite aggressive in their pricing of services, and pricing for hunting can be a large part of their strategy. While we

---

<sup>1</sup> Upon further review, our letter may not have clearly indicated the rates to which these discounts apply, and I would like to take this opportunity to clear up any confusion that may exist. The discounts provided under the promotion apply only to rates for hunting. In Rate Group 5, for instance, the tariffed rate for hunting is \$29.78 per 1FB (75% of the \$39.70 rate for 1FB service). A customer in Rate Group 5 electing a one-year contract under the promotion, therefore, would receive a discount of \$11.91 per month per 1FB for hunting charges (40% of \$29.78). Upon early termination of the term contract, the customer would pay back this discount of \$11.91 per 1FB for each month it enjoyed the discounted hunting rates under the promotion. I apologize for any confusion this may have caused, and I trust that this letter clarifies the nature of the promotion.

RECEIVED TN REGULATORY  
DATE: 12/15 TIME: 2:42  
DISTRIBUTED/INITIALS: /s/ [illegible]  
DATE: 12/15 TIME: 2:45



Mr. David K. Waddell, Executive Secretary  
December 15, 1999  
Page 2

are considering a tariff filing which will include, as a component part, certain reductions for hunting rates, the process of preparing tariff documents, obtaining approval of the tariff, and taking steps to implement the tariff upon approval take time. This promotion, therefore, is a short-term response to the competitive situation by which we are seeking a ninety-day window of opportunity to enjoy pricing flexibility similar to that of our competitors. In other words, the promotion is yet another benefit consumers are enjoying as a result of competition, i.e. lower prices.

Under Section A2.10 of BellSouth's General Subscriber Services Tariff, BellSouth may "offer special promotions of new or existing services or products upon 1 day notice to the Authority." You noted in your letter of December 10, 1999, that "[t]he proposed discounts for the ninety (90) day enrollment period seem to fall within the parameters of a promotional offering as set forth in GSST A2.10." BellSouth agrees that the discounts do, in fact, fall within the parameters of this tariff section. Your letter, however, goes on to address the "termination provisions for discontinuing a contract under the terms of the promotion" and uses these provisions as justification for unilaterally declaring that our promotional notification is "not effective." The "termination provisions" addressed in your letter are consistent with many termination provisions that appear in the approved contracts and tariffs of BellSouth and various CLECs -- in fact, they are of a much lesser magnitude than the "total buyout" provisions that appear in the tariffs of many CLECs. Additionally, the Staff itself has asked BellSouth to consider a "return of discounts received" approach to termination liability provisions during meetings with BellSouth. Naturally, we were surprised to learn that the Staff is apparently concerned about a promotion that adopts one of the approaches the Staff has endorsed.

Additionally, to the best of our knowledge, the Staff has never opined that any CLEC's tariffs are not effective because of the termination provisions appearing in them. In fact, we are unaware of the Staff's expressing any concerns whatsoever regarding such provisions in CLEC tariffs. Suggesting that the "return of discounts" provision in BellSouth's promotion is not effective while not commenting on "total buyout" provisions in CLEC's tariffs seems inconsistent with the public policy that "the regulation of telecommunications services and telecommunications services providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications

Mr. David K. Waddell, Executive Secretary  
December 15, 1999  
Page 3

services provider . . . ." See T.C.A. §65-4-123. Subjecting BellSouth's termination provisions to a different level of scrutiny than is applied to our competitors' termination provisions is contrary to the public policy of the State. It would seem that termination provisions either are adverse or are not adverse to the interests of consumers, regardless of the provider of the service with which the provision is associated. Thus, any concerns regarding termination provisions should apply equally to all competitors.

Accordingly, we disagree with the statements in your letter that "the proposed termination language should be presented to the Directors for public deliberation, and not be allowed to go into effect upon one (1) days notice via a promotional offering" and that "we do not consider this filing to be effective." As noted above, the termination provisions of this promotion are entirely consistent with the Authority's position on termination liability provisions in general, and returning the benefits a party has received under a contract upon that party's termination of the contract is entirely equitable and reasonable. In summary, the termination provisions in this promotion fall far short of any concerns recently expressed by the Directors or the Staff regarding termination provisions. The provisions in the promotion are more than fair and reasonable, and they should not be the subject of controversy.

Finally, we are unaware of any statute giving the Staff the authority to summarily deem a promotional filing "ineffective" as your letter purports to do. Thus, we respectfully submit that the promotional filing is proper and that the promotion is, in fact, in effect. Any other result effectively eviscerates the existing promotional tariff, creates a competitive disadvantage, and prevents customers from receiving lower rates for their services. As always, we welcome the opportunity to discuss any concerns you may have at your convenience, and feel that it would be to our mutual benefit to do so.

Sincerely, --

A handwritten signature in cursive script, appearing to read "Charlie Howorth".

Charles L. Howorth, Jr.

CLH/jem

## **EXHIBIT 4**

## TENNESSEE REGULATORY AUTHORITY

Melvin Malone, Chairman  
Lynn Greer, Director  
Sara Kyle, Director



460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

January 7, 2000

**VIA FACSIMILE**

Mr. Charles L. Howorth, Jr.  
Regulatory Vice President  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Nashville, TN 37201-3300

Re: BellSouth Promotional Filing Docket No. 99-00936

Dear Mr. Howorth: *Charlie,*

During a conversation with Guy Hicks on Tuesday, January 4, 2000, he informed me that BellSouth had proceeded to put the above referenced "promotion" into effect. Further, it is my understanding from talking with Mr. Hicks yesterday that BellSouth considers that this promotion has been effective since December 6, 1999.

Executive Secretary David Waddell's letter of December 10, 1999 did not render a decision on the termination provisions in BellSouth's Notice, contrary to what your letter of December 15, 1999 suggests. Rather, Mr. Waddell's letter stated that because the "promotion" contained certain termination provisions, it required additional study and should be presented to the Directors for consideration under the same notice requirements applicable to Tariffs.<sup>1</sup> For this reason, the "promotion" was not deemed effective and was returned to BellSouth for filing in compliance with Authority rules. In returning this filing to BellSouth, Mr. Waddell acted in accordance with his statutory duties as set forth in Tenn. Code Ann. § 65-1-209.

To date, there has been no action by the Authority which rendered the Executive Secretary's letter inoperative. Mr. Waddell's letter requested that BellSouth present the filing as a tariff so that it could be considered by the Directors. The information I received from Mr. Hicks indicates that BellSouth chose to ignore Mr. Waddell's instructions. As such, BellSouth has acted at its own peril by proceeding to put the

<sup>1</sup> There may be other issues attendant with this filing but given the limited nature of the filing and the time constraints additional issues were not addressed in Mr. Waddell's letter.

Mr. Charles L. Howorth, Jr.  
January 7, 2000  
Page Two

"promotion" into effect without approval by the Directors. BellSouth's action of proceeding in direct contravention to instructions from the Authority will be discussed by the Directors under Miscellaneous Business at the January 11, 2000 Authority Conference.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me at (615) 741-2904 ext. 170.

Very truly yours,

*Richard Collier*

Richard Collier, General Counsel  
Tennessee Regulatory Authority

cc: K. David Waddell, Executive Secretary

RECEIVED IN REGULATORY  
DATE: 1/10 TIME: 11:47  
DISTRIBUTED/INITIALS: lyp  
DATE: 1/10 TIME: 11:50

## **EXHIBIT 5**

# h.h. Gregg

APPLIANCES • ELECTRONICS • COMPUTERS

# NO INTEREST

7 BIG DAYS!

for

# 12 months

# on EVERYTHING!

## \$399 & Up

\*This is a same-as-cash offer. Monthly payments required and based upon 3% of the monthly unpaid balance. Interest accrues from date of purchase if not paid in full in 12 months. The annual percentage rate varies based on 14.73% plus prime rate. Credit approval required. Minimum finance charge = \$1. A credit service of GE Capital Consumer Card Co., Mason, Ohio.

Save Up To \$100 On  
Camcorders & Up To  
\$200 On Big-Screen TVs!

**46"**  
Big-Screen Stereo  
Color TV With  
Universal Remote

~~\$999~~  
-\$100

**\$899**

**NO Interest**  
1/1 Jan. 2001

THEATRE

**RCA**

**32"**  
Stereo Color TV  
With Color  
Picture-In-Picture

~~\$599~~  
-\$50

**\$549**

**NO Interest**  
1/1 Jan. 2001

THEATRE

F32672

**2**  
SPEED

White  
On White

**PERFORMA**  
by **MAYTAG**

**NO Interest**  
1/1 Jan. 2001

**\$399**

**Oversize • Capacity Plus Automatic Washer**

- 10 Cycles • 4 Temperature Combinations • Infinite Water Levels
- Self-Cleaning Lint Filter • PAV2200AWW

**Panasonic**

**NO Interest**  
1/1 Jan. 2001

**\$399**

**Dolby® Pro Logic™ Surround Home Theatre System**

- 70 Watts Per Channel x 5 • Subwoofer Output • SCHT270

**SONY**

**NO Interest**  
1/1 Jan. 2001

**\$899**

**Sony Mavica Digital Camera Featuring  
Mega Pixel 1280x960 Resolution**

- 1.3 Million Pixels CCD • 8x Optical/16x Digital Zoom • MPEG
- Movie Mode • Voice Memo Mode • MVCFD88

Offers in this advertisement effective Friday, January 14, through Thursday, January 20, 2000, unless otherwise indicated. Prior purchases excluded.

# SAVE \$400

on any computer when you sign up for 3 years of internet Service  
See store for details.

# NO INTEREST for 12 months on EVERYTHING! \$399 & Up

\*This is a same-as-cash offer. Monthly payments required and based upon 3% of the monthly unpaid balance. Interest accrues from date of purchase if not paid in full in 12 months. The annual percentage rate varies based on 14.73% plus prime rate. Credit approval required. Minimum finance charge = \$1. A credit service of GE Capital Consumer Card Co., Mason, Ohio.

## 550MHz AMD Athlon™ Computer Package with 17" Monitor and Printer

PROTEVA

Systemax  
The Perfect PC

Watch DVD Movies!

Includes 17" Monitor & Color Printer!

Record Your Own Music CDs!

**COMPAQ**  
475MHz AMD-K6-2 3D NOW! Notebook with 13.0" HPA Display & 24X CD-ROM

- 32MB 100MHz SyncDRAM
- 5.0 Gigabyte Hard Drive
- 13.0" STN SVGA Dual-Scan Screen
- Triden Cyberblade 3D
- 4MB Video • 56K V.90
- Integrated PCI Modem • 1200XL106

**No \$999\***

While Supplies Last

\*After mail-in rebates. \$1399 - \$400 CompuServe Internet Rebate = \$999

**COMPAQ**  
475MHz AMD-K6-2 3D NOW! Notebook with 12.1" TFT Display & 24X CD-ROM

- 64MB 100MHz SyncDRAM
- 6.0 Gigabyte Hard Drive
- 12.1" TFT Active Matrix Display
- Triden Cyberblade 3D 4MB Video • 56K V.90
- Integrated PCI Modem • 1200XL110

**No \$1299\***

While Supplies Last

\*After mail-in rebates. \$1699 - \$400 CompuServe Internet Rebate = \$1299



Save \$480

**\$999\***

Canon

While Supplies Last

- 64MB SyncDRAM Memory • 20 Gigabyte Hard Drive • 8X DVD ROM Drive • 4x4x24x CDRW Drive
- USR 56K V.90 Modem • 8MB Video Shared • Deluxe 3-Piece Stereo Speaker with Subwoofer
- 17" Color Monitor (16" viewable) • Canon Color Printer • K755110D/1770/BJC1000

\*After mail-in rebates. \$1479 - \$400 MSN Internet Rebate, \$50 monitor rebate & \$30 printer rebate = \$999

\*\$400.00 mail-in rebate with purchase of a computer package or notebook and a 3 year (36 months) subscription for CompuServe Internet Service or MSN Internet Service at \$21.95 per month. Original completed mail-in rebate form, copy of purchase receipt, and a valid major credit card are required. Mail-in rebate materials must be received by 2/29/00. You must be 18 years or older. Limit one per household. CompuServe and MSN offer competitive geographic coverage, however some customers may not have access to a local number. See store for more details.

### Includes All This Software:

- WORD PERFECT SUITE BUNDLE**
  - Word Perfect 9
  - Quatro Pro 9
  - Corel Presentations 9
  - Corel Central 9 Information Manager
  - Trelix Desktop Web Publisher
- HOME BUNDLE**
  - Productivity**
    - Clip Art - 125,000
    - Printmaster - Publishing Suite
    - Print Shop - Essentials
    - American Greeting CreaCard
  - Reference**
    - National Geo Trip Planner Deluxe
    - Compton's Encyclopedia 2000
  - Home**
    - Family Tree Maker
    - Weight Watchers
    - Bob Villa
    - Landscape Architect
    - Cosmopolitan Virtual
  - Education**
    - Mavis Beacon Teaches Typing
    - Oregon Trail
    - Passport To 31 Languages
    - BodyWorks 6.0
    - Logic Quest
    - Super Solvers Mission
  - Entertainment**
    - Myst
    - 1000+ Hot Games (Win95/98)
    - Team Appache
    - Chessmaster
    - Dogz & Catz 2
    - Cyber Patrol - 6 Months Free
    - Y2K Detects & Corrects
    - Panzer General II

**36-Bit USB Color Scanner with Easy Touch-Button Interface**  
• 2100U

**UMAX**

**\$129**

After \$20 mail-in rebate

**Canon**

**Fast Four Color BubbleJet Printer with Crisp, Rich Black Printing**  
• BJC2000

**\$69**

After \$30 mail-in rebate

**Panasonic.**

**Compact Plain-Paper Fax with Document Memory**  
• KXFP101

**\$119**

After \$20 mail-in rebate

**brother.**

**Plain-Paper Thermal Fax Machine**  
• PPF1270

**\$149**

**Canon**

**Color BubbleJet™ Printer with Large Individual Ink Tank. Saves Money**  
• BJC6000

**\$50 Rebate**

**\$149**

After \$50 mail-in rebate

**HP HEWLETT PACKARD**  
(Expanding Possibilities)

**DeskJet 832C Color InkJet Printer**  
Fast Photo Quality On Any Paper  
• DJ832C

**\$199**

**uniden**

**900MHz Cordless Phone with Call Waiting/Caller ID**  
• EX17960

**\$59**

**uniden**

**900MHz Digital Cordless Phone with Integrated Digital Answering Machine**  
• EXA8955

**\$89**

**Monday thru Saturday 10 a.m. - 9 p.m.  
Sunday 11 a.m. - 6 p.m.**

- INDIANA**
- ANDERSON - 1921 East 53rd St. - (765) 649-5531
  - AURORA - 888-A Green Blvd. - (812) 926-5060
  - BLOOMINGTON - 606 Gourley Pike - (812) 330-2040
  - CLARKSVILLE - 1050 East Hwy 131 - (812) 282-2999
  - FORT WAYNE - 4201 Parnell Avenue - (219) 484-7344
  - INDIANAPOLIS (4 Locations)
    - North - 3303 East 96th Street - (317) 848-1517
    - South - 8921 South U.S. 31 - (317) 888-2192
    - East - 10101 East Washington St. (317) 899-4070
    - West - 3651 Commercial Road - (317) 293-4922
  - KOKOMO - 2021 East Markland - (765) 457-5531
  - LAFAYETTE - 311 Sagamore Parkway - (765) 447-5031
  - MUNCIE - 4301 Clara Lane - (765) 286-3800
  - RICHMOND - 3775 National Road East - (765) 983-3581
  - TERRE HAUTE - 290 Honey Creek Parkway - (812) 234-3763

## h.h. Gregg

APPLIANCES • ELECTRONICS • COMPUTERS

- KENTUCKY**
- ALEXANDRIA - 7009 Alexandria Pike - (606) 448-2600
  - BOWLING GREEN - 1785 Campbell Lane - (270) 782-9484
  - FLORENCE - 7601 Mall Road - (606) 372-7700
  - LOUISVILLE - 9132 Taylorsville Road - (502) 495-2999
- TENNESSEE**
- CLARKSVILLE - 2886 Wilma Rudolph Boulevard - (931) 503-2603
  - NASHVILLE (3 Locations)
    - Rivergate - 1515 Gallatin Pike - (615) 869-4285
    - Thompson Lane - 523 Thompson Lane (615) 259-3344
    - Hickory Hollow - 5214 Hickory Hollow Parkway - (615) 731-0260



- OHIO**
- CHILLICOTHE - 1059 N. Bridge Street - (740) 702-4730
  - CINCINNATI (4 Locations)
    - Colerain - 9930 Colerain Avenue - (513) 741-5111
    - Eastgate - 4468 Eastgate Boulevard - (513) 943-3530
    - Fields Ertel - 9450 Fields Ertel Road - (513) 697-5600
    - Western Hills - 5111 Glencrossing Way - (513) 347-4800
  - COLUMBUS (3 Locations)
    - Brice Road - 2800 Brice Road - (614) 755-8900
    - Morse Road - 800 Morse Road - (614) 430-1865
    - West Broad - 4250 W. Broad Street - (614) 275-5980
  - HAMILTON - 1371 Main St. - (513) 785-6100
  - NEWARK/NEATH - 901 Hebron Road - (740) 788-6030
  - ZANESVILLE - 3528 Maple Avenue - (740) 455-8080

**90 Days Same-As-Cash\* Every Day!**

\*A credit service of GE Capital Consumer Card Co., Mason, Ohio. Payments are based upon 3% of the monthly unpaid balance. The annual percentage rate varies based on 14.73% plus prime. Ask for details. We reserve the right to limit quantities.



**EXHIBIT 6**

**EARL DUNN**  
PONTIAC • BUICK • GMC TRUCKS

# CREDIT CARD <sup>UP TO</sup> \$3,000 PAYOFF!

CREDIT HOTLINE  
1-800-716-6276

**DON'T PAY OUTRAGEOUS 18% CREDIT CARD  
INTEREST WHEN YOU CAN BUY A NEW CAR AND  
PAY ONLY 2.9%!**

## GMC

### 2000 SONOMA EXT. CAB

**40 SONOMAS AVAILABLE**

- ✓ AIR CONDITIONING
- ✓ CAST ALUMINUM WHEELS
- ✓ CD PLAYER
- ✓ TILT WHEEL
- ✓ CRUISE CONTROL
- ✓ TACHOMETER

STK. #028554



**2.9% APR**  
**\$89**  
per month  
36 month smart lease  
Plus tax, \$4,400 due at delivery, \$150 security deposit,

### 2000 SIERRA

**75 SIERRAS AVAILABLE**

- ✓ AM/FM STEREO
- ✓ 4 WHEEL ANTI-LOCK BRAKES
- ✓ COLOR CARPET & MATS
- ✓ UPLEVEL CLOTH TRIM
- ✓ FOLD DOWN ARM REST
- ✓ DUAL LUMBAR ADJUST
- ✓ TACHOMETER
- ✓ DUAL AIR BAGS
- ✓ PASS SHUT-OFF SWITCH
- ✓ AUTO-CTRL HALOGEN HEADLAMPS
- ✓ VORTEC ENGINE

STK. #029646



**NEW DESIGN**  
**\$159**  
per month  
48 month smart lease  
Plus tax, \$3,500 due at delivery, \$200 security deposit

## PONTIAC

### 2000 GRAND AM COUPE

**30 GRAND AMS AVAILABLE**

- ✓ POWER LOCKS
- ✓ LOCK-OUT PROTECTION
- ✓ FOG LAMPS
- ✓ TILT WHEEL
- ✓ REAR DEFOGGER
- ✓ ILLUMINATED ENTRY
- ✓ ELECTRIC TRUNK RELEASE
- ✓ BATTERY RUN-DOWN PROTECTION
- ✓ AM/FM CASSETTE
- ✓ TACHOMETER
- ✓ TOURING TIRES
- ✓ DUAL FRONT AIR BAGS
- ✓ ANTI-LOCK BRAKES

STK. #03527



**2.9% APR**  
**\$169**  
per month  
36 month smart lease  
Plus tax, \$3,500 due at delivery, \$200 security deposit

# 2000 GRAND PRIX

**25 GRAND PRIXS AVAILABLE**

- ✓ POWER WINDOWS/LOCKS
- ✓ FOG LAMPS
- ✓ CHILD SECURITY LOCKS
- ✓ 4-WHEEL ANTI-LOCK BRAKES
- ✓ ENHANCED TRACTION
- ✓ POWER MIRRORS
- ✓ AM/FM CASSETTE
- ✓ TILT WHEEL
- ✓ RECLINING SPORT SEATS
- ✓ TOURING TIRES
- ✓ DUAL FRONT AIRBAGS

STK. #06526



**2.9% APR**

**\$209**

**per month**  
**39 month smart lease**  
Plus tax, \$3,500 due at delivery, \$250 security deposit



# 2000 CENTURY

**20 CENTURYS AVAILABLE**

- ✓ REMOTE KEYLESS ENTRY
- ✓ ENHANCED TRACTION CONTROL
- ✓ TILT WHEEL
- ✓ POWER WINDOWS
- ✓ POWER LOCKS
- ✓ POWER MIRRORS
- ✓ DUAL VANITY MIRRORS
- ✓ CRUISE CONTROL
- ✓ SEEK & SCAN CASSETTE
- ✓ REAR WINDOW ANTENNA
- ✓ DUAL FRONT AIRBAGS
- ✓ ANTI-LOCK BRAKES

STK. #010540



**2.9% APR**

**\$239**

**per month**  
**36 month smart lease**  
Plus tax, \$3,500 due at delivery, \$275 security deposit

# 2000 LESABRE

**25 LESABRES AVAILABLE**

- ✓ SIDE IMPACT AIRBAGS
- ✓ SELF ALIGNING HEADREST
- ✓ POWER LOCKS/WINDOWS
- ✓ AUXILIARY POWER OUTLET
- ✓ CRUISE CONTROL
- ✓ POWER MIRRORS
- ✓ DUAL VANITY MIRRORS
- ✓ POWER TRUNK RELEASE
- ✓ KEYLESS ENTRY
- ✓ TWILIGHT SENTINEL
- ✓ AM/FM CASSETTE

STK. #012604



**ALL NEW DESIGN**

**\$329**

**per month**  
**36 month smart lease**  
Plus tax, \$3,600 due at delivery, \$375 security deposit

## SPECIAL PURCHASE (PRE-OWNED PROGRAM) CARS

### 99 OLDS INTRIGUE

#P91552

- ✓ V-6
- ✓ POWER WINDOWS/LOCKS
- ✓ TILT ✓ CRUISE
- ✓ CD PLAYER/CASSETTE
- ✓ TRACTION CONTROL
- ✓ DUAL AIRBAGS
- ✓ ANTI-LOCK BRAKES
- ✓ ALUMINUM WHEELS



**\$13,988**

### 99 PONTIAC BONNEVILLE SE

#P91754

- ✓ POWER SEAT
- ✓ POWER WINDOWS
- ✓ POWER LOCKS
- ✓ TILT ✓ CRUISE
- ✓ CASSETTE
- ✓ ALUMINUM WHEELS
- ✓ ANTI-LOCK BRAKES
- ✓ AIR BAGS



**\$15,488**

### 99 BUICK REGAL LS

#P91759

- ✓ LEATHER INTERIOR
- ✓ MONSOON STEREO SYSTEM
- ✓ POWER SEAT
- ✓ POWER WINDOWS
- ✓ CD & CASSETTE
- ✓ TILT ✓ CRUISE
- ✓ ALUMINUM WHEELS
- ✓ AIRBAGS



**\$15,988**

ALL PRICES PLUS TAX, TITLE, LIC. FEE. ALL REBATES INCLUDED IN SALE PRICES AND DISCOUNTS. REBATES ARE IN LIEU OF INTEREST RATES. ACTUAL VEHICLES MAY DIFFER FROM ILLUSTRATIONS SHOWN. PRICES GOOD THRU 1/17/2000. DUE TO AD DEADLINES SOME VEHICLES MAY BE SOLD. ALL SALE PRICES ARE ON OUT OF STOCK UNITS ONLY.

# EARL DUNN

PONTIAC • BUICK • GMC TRUCKS

# 865-5650

GALLATIN ROAD (MADISON)

**COLLECTIVE EXHIBIT 7**



---

**9.0 SPECIAL ARRANGEMENTS (cont'd)**

**9.3 Special Promotions**

The Carrier may from time to time engage in special promotional trial service offerings of limited duration (not to exceed ninety days on a per customer basis for non-optional, recurring charges) designed to attract new subscribers or to increase subscriber awareness of a particular tariff offering. Requests for promotional offerings will be presented to the Commission for its review in accordance with rules and regulations established by the Commission, and will be included in the Carrier's tariff as an addendum to the Carrier's price lists.

**9.4 Discounts**

The Company may, from time to time as reflected in the price list, offer discounts based on monthly volume (or, when appropriate, "monthly revenue commitment" and/or "time of day" may also be included in the tariff).

---

Issued: April 11, 1997

Effective: May 12, 1997

Issued by: Julia Waysdorf  
Senior Director, Government Affairs  
9605 East Maroon Circle  
Englewood, Colorado 80112

## **10.0 - PROMOTIONAL OFFERINGS**

### **10.1 Retail Calling Card Promotion**

From May 12, 1997, through July 12, 1997, the Company will offer a total of 100 free minutes per Calling Card, limited to one Calling Card per employee not to exceed 10 employees per Customer. This promotional offer is not available to Customers who are not Customers of its local exchange (dial tone) services, such as Standard Business Line, Key System Line and PBX Trunk Service. This promotional offer is also not available to wholesale Customers of the Company.

### **10.2 "Satisfaction Guaranteed" Promotion**

From February 16, 1999 and continuing for 180 days thereafter, the company will offer a "Satisfaction Guaranteed" promotion. If the Customer is not fully satisfied with the Company's service within the first ninety days after the Company activates service to the Customer, and if the Customer wishes to return to the Customer's previous local exchange service provider, the Company will pay non-recurring charges the Customer may incur for restoration of the Customer's previous local exchange (dial tone) service, excluding any extra upgrades and features, from the Customer's previous local exchange provider, and excluding any upgrades and additional features provided by the Company to the Customer. The Company's obligation under this Promotion to reimburse the Customer for non-recurring charges shall not exceed \$500.00 per Customer under any circumstances, and further provided that the Customer may not avail of the "Satisfaction Guaranteed" Promotion more than once during the period of this Promotion. Additionally if the Customer's telephone numbers were changed upon the Company's activation of service, the Company is not obligated to restore local exchange service under the previous telephone numbers. This "Satisfaction Guaranteed" Promotion is available to all Customers whose Service from the Company was activated within 90 days prior to the effective date of this tariff filing and to all Customers whose Service from the Company is activated after the effective date of this tariff filing. (T)

Issued: February 16, 1999

Effective: February 16, 1999

Issued by: Julia Waysdorf  
Senior Director, Government Affairs  
161 Inverness Drive West  
Englewood, Colorado 80112

---

**10.0 PROMOTIONAL OFFERINGS**

**10.3 No Money Down Promotion**

Beginning January 14, 1998 through March 31, 1998, for new Customers that switch their Local Exchange Telecommunications Service to the Company from an I.L.E.C., and for existing Customers that add a new service to their existing service, the Company will waive all Non-Recurring Installation Charges for (Standard Single/Multiple Business Line, Key System, ICG Standard Business Line Plus, Single/Multiple Analog PBX Trunk, DID/DOD, Digital Voice Grade DS-1/Digital Trunks, ISDN PRI).

In order to qualify, new Customers must maintain a minimum of 10 active lines or trunks with the Company for 60 days after installation. If the Customer does not maintain at least 10 active lines or trunks in service for at least 60 days, the Company will bill to the Customer and the Customer shall be responsible for payment of the full amount of the credit that was previously extended to the Customer by the Company under this No Money Down Promotion. The Customer will be responsible for payment of all charges for additional lines or trunks that exceed 300 lines or trunks. This Promotion is available to the Company's "on-net", "hybrid" and "resale" Customers. Payment in full, consisting of the balance due in excess of 300 lines or trunks, must be received by the Company by the due date specified on the invoice in order to prevent the assessment of a late payment charge on any unpaid amount. New Service Contracts must be signed and dated by both parties by March 31, 1998.

---

Issued: January 14, 1998

Effective: February 13, 1998

Issued by: Carl Jackson, Jr.  
Senior Director, Government Affairs  
50 Glenlake Parkway, Suite 500  
Atlanta, Georgia 30328

Advice Letter No. 5



## 10.0 - PROMOTIONAL OFFERINGS

### 10.4 Digital Access Services Promotion

Beginning February 16, 1999, through May 1, 1999, New Digital Access Services customers who enter into a contract agreement for "Plan A" service will receive a discount from the Central Office Port, Optional 1 monthly recurring charge. The discount amount received will range from approximately 45% to 55%, depending upon the term of the contract agreement. This promotion will also be offered to existing customers who order new PRI's during the dates specified above.

In order to qualify for this promotion, a customer must have service installed no later than 90 days following contract approval.

ICG reserves the right to adjust this promotional pricing at any time with 90 days written notification to the Customer.

Similarly situated customers agreeing to the same terms and conditions within this promotion will be eligible to receive the same discounts.

(N)

(N)

Issued: February 16, 1999

Effective: February 16, 1999

Issued by: J. Carl Jackson, Jr.  
Senior Director, Government Affairs  
50 Glenlake Parkway, Suite 500  
Atlanta, Georgia 30328

## 10.0 - PROMOTIONAL OFFERINGS

### 10.5 Installation Credit Promotion

Beginning February 16, 1999 through August 16, 1999, for new customers of the eligible (T) services listed herein, that switch their Local Exchange Telecommunications Service to the Company from an ILEC, and for existing Customers that add one or more of the following eligible services to their existing service, the Company will determine Non-recurring Installation credits on a case by case basis (ICB), pursuant to this Installation Credit Promotion and the particular tariffed services ordered by the customer. This promotion applies to the following eligible services: Standard Single/Multiple Business Line, ICG Standard Business Line Plus, Single/Multiple Analog PBX Trunk, Digital (D) Voice Grade DS-1/Digital Trunks, and Digital Access Service (DAS). Other than the (D) Installation Credit described in this section, all other recurring and non-recurring charges listed in this tariff as applicable to the eligible services continue to apply.

In order to qualify for this Installation Credit promotion, the customer must maintain a minimum of 10 lines or trunks with the Company for the duration of 90 days from date of contract signature. If the Customer does not maintain at least 10 active lines or trunks in service for at least 90 days after the contract signature date, the Company will bill to the Customer and the Customer shall be responsible for payment of the full amount of the credit that was previously extended to the Customer by the Company under this "Installation Credit". New Service Contracts must be signed and dated by both ICG Telecom Group and the Customer by August 16, 1999 and all services must be installed (T) by October 16, 1999 in order to be eligible for this promotion. (T)

Arrangements for this promotion will be developed on a case by case basis (ICB) in response to the Company's need to meet competition and will be offered to the Customer in writing and on a non-discriminatory basis.

Issued: February 16, 1999

Effective: February 16, 1999

Issued by: J. Carl Jackson, Jr.  
Senior Director, Government Affairs  
50 Glenlake Parkway, Suite 500  
Atlanta, Georgia 30328

TN9805



LOCAL EXCHANGE SERVICE

4. Promotional Offerings

4.1 Promotional Offerings: The Company, from time to time, may make promotional offerings of its services which may include waiving or reducing the applicable charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made.

4.2 Customer Assurance Promotion

Beginning April 1, 1998 through June 30, 1998, MCImetro will offer the following benefits to all new and existing, facilities-based MCImetro business customers. During the customer's first 6 months of service, if the customer is dissatisfied for any reason MCImetro will provide the customer a credit equal to the customer's non-recurring charges, monthly recurring charges, and usage charges (excluding Operator Assisted Surcharges). If the customer signed a term plan and elects to return to their previous carrier during the first six months of service, the customer can cancel the term without liability. The customer is only eligible to receive up to two credits. The customer may not receive more than \$5,000 per location per credit.

Issued: February 13, 1998

Effective: March 15, 1998

Julie L. Davis  
Tariff Manager  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.3 Local Service Exchange Install Waiver Promotion

Beginning September 1, 1998 and ending September 30, 1998, the Company will offer the following promotion to all new Local Exchange Service Customers who order service during the promotional period. All installation charges listed below for digital trunks will be waived for the Customer's first year of service:

Account Setup

Account Changes (including Moves, Changes, Additions and Billing Record Changes)

Line Connection Charges (Local Trunk-Basic, Local Trunk-DID, Local Trunk-2 Way Direct)

DID/2 Way Direct Installation Telephone Number Charges

DID/2 Way Direct Non-Recurring Installation Charges

Vanity Number Non-Recurring Charge

Additional Listing Non-Recurring Charge

Non-Listed Number Non-Recurring Charge

Non-Published Number Non-Recurring Charge

Local ISDN/PRI Non-Recurring Charges for Service Configuration 1, 2, and 3,

Optional Features and B Channel Service

Selective Call Screening

Issued: July 31, 1998

Effective: September 1, 1998

Julie L. Davis  
Tariff Manager  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.4 Local Test Drive Promotion

Beginning January 22, 1997 and ending March 26, 1997, MCImetro will offer the following promotion to new local exchange customers who are existing T-1 digital access customers of an MCImetro-designated company and allow their local exchange telephone service's Local Access Channels to connect to its existing T-1 digital access circuits.

Eligible customers will receive a credit, not to exceed \$5,000, equal to the following amounts, based on the number, type and location of new exchange telephone service Local Access Channels ordered by the customer under this promotion, as follows:

Location

Memphis, TN

Local Access Channels

<u>Local Line</u>	<u>Local Trunk Basic</u>	<u>Local Trunk DID/2 Way Direct</u>	<u>DID Number/2 Way Direct Charge per block of 20</u>
\$45.00	\$45.00	\$50.00	\$3.00

The credit will be applied to the customer's first monthly invoice following enrollment in this promotion.

Customers enrolled in this promotion offering are not eligible to receive the benefits of any other promotional offering except the New Customer Promotion.

4.5 ILNP Promotion

Beginning January 16, 1998 and ending March 31, 1998, MCImetro will waive the Interim Local Number Portability via Remote Call Forwarding Monthly Recurring Charge for Local Lines, Local Trunks - Basic, Local Trunks - DID, and Local Trunk - 2 Way Direct. This promotion is limited to one number per line/per trunk, or one number per DID trunk.

Issued: December 17, 1997

Effective: January 16, 1998

Julie L. Davis  
Tariff Manager  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.6 MCImetro Local Services Investor Promotion - Memphis

Beginning 1/22/97 and ending 1/26/97, MCImetro will offer the following promotion to new customers of non-resold exchange service that agree to become customers of MCImetro Local Service when local exchange service becomes Service Available in the customer's local calling area. Customers enrolled in this promotion are eligible to receive the benefits described below.

Enrolled customers who designate an annual volume commitment will receive the following credits in each month following the customer's enrollment in this promotion and the date when MCImetro's non-resold exchange service becomes available in the customer's exchange service area, based on the customer's term of service and annual volume commitment. Annual volume commitments are available in the following amounts: \$6,000, \$12,000, \$24,000, \$36,000, \$48,000, \$60,000, \$84,000, \$96,000, \$120,000, \$180,000, \$240,000, \$300,000, \$360,000, \$420,000, or \$480,000. The customer's annual volume commitment will be calculated on the following charges: recurring Local Trunk - Basic charges, recurring Local Trunk - DID charges, recurring Local Trunk - Digital Interface charges, DID number charges, and usage charges.

<u>Annual Volume Commitment</u>	<u>One Year</u>	<u>Term of Service</u>	
		<u>Two Years</u>	<u>Three Years</u>
\$ 6,000	\$ 50	\$ 75	\$ 100
12,000	100	150	200
24,000	200	300	400
36,000	300	450	600
48,000	400	600	800
60,000	500	750	1,000
84,000	700	1,050	1,400
96,000	800	1,200	1,600
120,000	1,000	1,500	2,000
180,000	1,500	2,250	3,000
240,000	2,000	3,000	4,000
300,000	2,500	3,750	5,000
360,000	3,000	4,500	6,000
420,000	3,500	5,250	7,000
480,000	4,000	6,000	8,000

Issued: December 23, 1996

Julie L. Davis  
Tariff Manager

Effective: January 22, 1997

780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.6 MCImetro Local Services Investor Promotion - Memphis (Cont.)

Enrolled customers who do not designate an annual volume commitment will receive credits based on the customer's location and term commitment. the customer's credit amount will be based on the number of Local Access Channels (Local Lines, Local Trunks - Basic, and/or Local Trunks - DID) and DID Number Charges ordered by the customer and on the exchange service area in which the customer orders service multiplied by 10% for customer committing to a one-year term 15% for a two-year term, and 20% for a three-year term.

Exchange Service Area

Memphis, TN

Credit Per Local Access Channel			
Local Line	Local Trunk - Basic	Local Trunk DID/2 Way Direct	DID Number/2 Way Direct Charge (per 20)
\$45.00	\$75.00	\$75.00	\$3.25

Customers enrolled in either option will receive one credit for each month from the customer's enrollment date in this promotion and the date when the non-resold exchange service becomes available in the customer's exchange service area with a limit of 12 such credits. Customers whose service is billed on a local service-only invoice, will receive a coupon for their credit which they must remit with their invoice in order to receive the invoice credit. This coupon will be valid for 12 months beginning with the customer's local service start date. All other customers will receive an invoice credit once to be applied to the customer's invoice within 60-days from the commencement of customer's exchange service. Credit balances will carry over to invoices in subsequent months until depleted. The term of service will commence when the customer's service is installed.

The term will commence no earlier than the first full billing month in which MCImetro Local Services are available in the customer's market. The customer's Annual Volume Commitment will be based upon the following Eligible Volume charges: recurring Local Line charges, recurring Local Trunk - Basic charges, recurring Local Trunk - DID charges, recurring Local Trunk - Digital Interface charges, usage charges, EUCL charges, and monthly recurring DID number charges. The customer will be required at the time of enrollment in this promotions to enroll for service.

Issued: February 5, 1997

Effective: March 7, 1997

Julie L. Davis  
Tariff Manager  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342



LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.6 MCImetro Local Services Investor Promotion - Memphis (Cont.)

The customer will receive a credit for the following charges: Account Set-up, Account Changes (including Moves, Changes, Additions and Billing Record Changes), Line Connection Charges (Local Line, Local Trunk - Basic and Local Trunk - DID), Line Restoral Charges, DID Number Installation and Number charges, Vanity Number Installation, Voice Mail Installation, Call Assistant Installation, and Channelization Connection.

The customer will receive monthly discounts based on their commitment term. The customer will receive the following discounts on recurring Local Line charges, recurring Local Trunk - Basic charges, recurring Local Trunk - DID charges, recurring Local Trunk - Digital Interface charges, usage charges, EUCL charges, and monthly recurring DID number charges. These discounts will be in lieu of all other discounts and promotions, excluding installation waivers and discounts offered as part of this promotion.

<u>Term Commitment</u>	<u>Discount</u>
1 year	10%
2 years	15%
3 years	20%

Lastly, the customer will have the following charges waived in the last month of each term year: Monthly recurring line charges, monthly recurring trunk charges, line usage charges, trunk usage charges, EUCL charges, and monthly recurring DID number charges. The credit will be based on the 12th, 24th, and 36th month of service and will be applied to the 13th, 25th, and 37th month's invoice.

Additionally, for customers who are committed to a 2-year or 3-year term plan, after one year of local exchange service, MCI will waive applicable install charges for any new lines or trunks ordered by the customer.

An area will become Service Available when the service has become commercially available, when MCImetro has received all regulatory approvals and when all required price lists have been filed.

Issued: December 23, 1996

Julie L. Davis  
Tariff Manager

Effective: January 22, 1997

780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.6 MCImetro Local Services Investor Promotion - Memphis (Cont.)

If the customer selected an Annual Volume Commitment and if, at the end of any year of the term, a customer has not met the annual volume commitment, the customer must pay the difference between its actual volume and its Annual Volume Commitment.

If the customer discontinues all of its Local Services furnished under this promotion prior to the expiration of the committed term the customer will be billed and required to pay an early termination charge. The early termination charge for customers that selected an Annual Volume Commitment will equal the current year's underutilization charges plus a percentage of the annual volume commitment for each year of the term remaining unfulfilled based on the chart below. For customers who have not chosen an Annual Volume Commitment the early termination charge will equal the customer's highest billed charges during the term multiplied by the number of months that are remaining in the term.

<u>Months of Service</u>	<u>Length of Term Commitment</u>		
	<u>1 Year</u>	<u>2 Years</u>	<u>3 Years</u>
0 - 6	100%	100%	100%
7 - 9	50%	100%	100%
10 - 12	10%	100%	100%
13 - 15		50%	100%
16 - 18		25%	100%
19 - 21		25%	50%
22 - 24		10%	50%
25 - 27			50%
28 - 33			25%
34 - 36			10%

Any customer who cancels its Investor Term Plan prior to its expiration will be required to repay any promotional credit that it received contingent upon enrolling in this promotion, in addition, to other applicable early termination charges noted above.

Issued: December 23, 1996

Julie L. Davis  
Tariff Manager

Effective: January 22, 1997

780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.7 Local Conversion Promotion

Beginning January 16, 1998 and ending January 31, 1998, MCImetro will offer the following promotion to digital trunk customers who enroll. The benefits of this promotion are not available to customers who subscribe to networkMCI One services, or the Preferred Calling Plan offered by MCI Telecommunications. Eligible customers will receive a credit of \$80 on each new trunk, DID/2 Way Direct Trunk, or ISDN-PRI Trunk. The credit is not to exceed \$7,500 per location and it will be applied on the customers second months invoice. If the customer discontinues service prior to the twelfth month of service, they will be billed and required to pay the credits received from this promotion. This promotion is not eligible in conjunction with any other promotion except for the Customer Assurance Promotion.

4.8 Charter Promotion

Beginning 06/01/97 and ending 06/02/97 or upon enrollment by the first four customers, whichever occurs first, the Company will offer the following promotion to qualified customers. Specifically, the Company will offer customers a monthly credit in the six monthly billing periods following the date of customer's enrollment in this promotion. Each credit will be based on the customer's actual usage charges and monthly recurring Local Line charges, recurring Local Trunk-Basic charges, recurring Local Trunk-DID charges, recurring Local Trunk-Digital Interface charges, recurring PRI charges, and DID number charges. Each monthly credit received by the customer under this promotion may not exceed \$40,000, regardless of the number of service locations. Each credit will be applied to such charges for the following monthly billing period. A customer may enroll a maximum of 10 service locations under this promotion. In order to be eligible for this promotion, a customer must also have in excess of \$50,000 in monthly long distance usage, and \$40,000 in monthly local exchange service usage.

Enrolled customers must consent that during the 6 month term and during the 12-month period immediately thereafter and at no expense to the Company, the Company may identify and use the customer as a referral to other customers or prospects regarding the customer's use of non-resold exchange service provided by the Company, and/or as a reference in any news releases, public announcements, advertising materials, and in any and all mediums deemed appropriate by the Company, without the customer's prior approval. Customers

Issued: December 17, 1997

Effective: January 16, 1998

Julie L. Davis  
Tariff Manager  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.8 Charter Promotion (Cont.)

may terminate use of the service prior to the expiration of the 6-month term upon at least 30-days written notice to the Company, however, any credits not yet received by the Customer will be forfeited.

Customers enrolled in this promotional offering are not eligible to receive the benefits of any other promotional offering connected to the service, except for promotions that waive installation or other one-time charges associated with the installation of the service, and the Customer Assurance Promotion.

4.9 Digital Trunk Promotion

Beginning September 1, 1997 and ending January 31, 1998, MCImetro will offer the following promotion to new and existing facilities-based MCImetro customers who enroll in this promotion and who purchase digital trunks in blocks of 24. Eligible customers will receive a monthly credit per trunk for digital trunks during the term of the promotion as follows:

Credit Per Trunk

Local Trunk - Basic (Digital)(Per Minute Option)	\$ 2.50
Local Trunk - Basic (Digital)(Per Call Option)	\$ 2.50
Local Trunk - Basic (Digital)(Unlimited Option)	\$ 4.00
Local Trunk - DID (Digital)	\$ 4.00

Customers must retain the original block of 24 digital trunks enrolled under this promotion in order to receive the monthly credits. Customers who disconnect trunks from the enrolled block of 24 trunks will no longer receive the credits in this promotion.

Issued: November 21, 1997

Effective: December 21, 1997

Julie L. Davis  
Tariff Manager  
780 Johnson Ferry Road, Suite 700  
Atlanta, GA 30342

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.10 Selective Call Screening Promotion

Beginning May 1, 1998 and ending June 15, 1998, MCImetro will offer the following the promotion to new and existing facilities based local exchange business customers who subscribe to the Selective Call Screening Service. MCImetro will waive the non-recurring and monthly recurring per line or per trunk charges for Selective Call Screening during the term of this promotion.

4.11 Install Waiver Promotion

Beginning November 12, 1998 and ending October 31, 1999, the Company will offer the following promotion to all new business facilities based customers who convert existing local exchange service from another local exchange carrier to MCImetro Local Services. To receive the benefits of this promotion, customers must commit, at the time of converting to MCImetro Local Service, to at least a one year term commitment under the Local On-Net Term Plan or the On-Net Term Plan discount program. Eligible customers will have the installation charges listed below waived:

Account Setup

Account Changes (including Moves, Changes, Additions, and Billing Record Changes)

Line Connection Charges (Local Line, Local Trunk-Basic, Local Trunk DID, Local Trunk-2 Way Direct, Local ISDN/PRI)

Direct Inward Dialing (DID)/2 Way Direct Installation for Blocks of DID/2 Way Direct Numbers

Vanity Number Non-Recurring Charge

Directory Listings Non-Recurring Charges

Local ISDN/PRI Non-Recurring Charges for Service Configuration 1, 2, and 3, Optional Features and B Channel Service

Selective Call Screening Non-Recurring Charge

Non-recurring charges for optional features

Customers who terminate their term plan prior to the expiration of the committed term will be charged for the waived installation charges. New lines, trunks, or new locations added after the initial service install are not eligible for the installation waiver for the committed term. Additional services converted from another local exchange carrier after the initial service install will be eligible for the install waiver for the committed term.

Issued: June 3, 1999

Effective: July 3, 1999

Sandy Chandler  
Tariff Manager  
6 Concourse Parkway, Suite 3200  
Atlanta, GA 30328

LOCAL EXCHANGE SERVICE

4. Promotional Offerings (Cont.)

4.12 Lit Building Promotion

Beginning July 3, 1999 and ending August 1, 1999, the Company will offer the following promotion to new customers of local service who, at time of promotion enrollment (i) enroll in at least a one-year, \$100 per month term/volume commitment under the On-Net Term Plan or Local On-Net Term Plan discount programs and (ii) are located and provisioned in a building connected via Company-owned fiber to the Company's network (Lit Building). Eligible customers enrolled in this promotion will receive a credit applied to each invoice month specified in the schedule below based on the customer's selected length of term commitment:

<u>Term Commitment</u>	<u>Invoice Month</u>
1 Year	13 <sup>th</sup> , 14 <sup>th</sup> and 15 <sup>th</sup> month
2 Year	13 <sup>th</sup> , 14 <sup>th</sup> , 15 <sup>th</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> and 27 <sup>th</sup> month
3 Year	13 <sup>th</sup> , 14 <sup>th</sup> , 15 <sup>th</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> , 27 <sup>th</sup> , 37 <sup>th</sup> and 38 <sup>th</sup> month
4 Year	13 <sup>th</sup> , 14 <sup>th</sup> , 15 <sup>th</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> , 27 <sup>th</sup> , 37 <sup>th</sup> , 38 <sup>th</sup> , 49 <sup>th</sup> , and 50 <sup>th</sup> month
5 Year	13 <sup>th</sup> , 14 <sup>th</sup> , 15 <sup>th</sup> , 25 <sup>th</sup> , 26 <sup>th</sup> , 27 <sup>th</sup> , 37 <sup>th</sup> , 38 <sup>th</sup> , 49 <sup>th</sup> , 50 <sup>th</sup> , 61 <sup>st</sup> and 62 <sup>nd</sup> month

For Flat Rate Option customers each credit will be equal to the customer's monthly recurring Local Line, Local Trunk-Basic, Local Trunk-DID/2 Way Direct, Local Trunk-DID/2 Way Direct Number Charges and Local Trunk ISDN PRI charges for Lit Building locations as defined in this promotion (collectively, "Local Service Charges"), after discounts, based on the month of service prior to each invoice month specified in the schedule above. For Measured Option customers each credit will be equal to the Local Service Charges, after discounts, based on the month of service prior to each invoice month specified in the schedule above. Measured Option customers will receive a additional credit for usage incurred calculated based on the average local usage for the 3 months of service prior to each invoice month as specified in the schedule above.

Credits provided under this promotion will not be calculated upon: Directory Assistance charges; operator service charges; and Optional Feature monthly charges. Customers discontinuing local service or terminating their term plan prior to the expiration of the committed term will no longer receive the benefits of this promotion. Only lines and trunks ordered within 60 days of the customer's term plan enrollment signature date are eligible for the benefits of this promotion.

Issued: June 3, 1999

Effective: July 3, 1999

Sandy Chandler  
Tariff Manager  
6 Concourse Parkway, Suite 3200  
Atlanta, GA 30328





LOCAL EXCHANGE SERVICES  
T.R.A. NO. 1

ISSUED: April 14, 1998

EFFECTIVE: May 14, 1998

Third Revised Page 68

4. Promotional Offerings

4.1 Promotional Offerings: The Company, from time to time, may make promotional offerings of its services which may include waiving or reducing the applicable charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made. Promotions will be filed with the Tennessee Regulatory Authority for approval on one day's notice.

4.2 Trial Service Offering: In the normal course of business, the Company, at its discretion may elect to offer certain services to Customer on a "trial basis". These trial offerings do not obligate the Company to continue the trial beyond a stated period or to offer said service as general tariffed offering in the future.

5. Individual Case Basis (ICB) Arrangements

Arrangements will be developed on an individual case basis in response to a bona fide request from a Customer or prospective Customer to develop a competitive bid for a service offered under this tariff. Rates quoted in response to such competitive requests may be different than those specified for such service in this tariff. ICB rates will be offered to the Customer in writing and on a non-discriminatory basis.





September 15, 1999

RECEIVED

Mr. David N. Foster  
Manager – Telecommunications Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505

TARIFF FILING

SEP 15 1999

990701

TN REGULATORY AUTHORITY  
TELECOMMUNICATIONS DIVISION

**RE: Third Anniversary Promotion**

Dear David:

In celebration of its third anniversary, NEXTLINK is offering the attached promotion to existing and potential customers in its on-net buildings in Memphis and Nashville. The promotion in each building will run for 90 days, which will be initiated with the delivery of the attached flyer to each tenant in the building. Expiration of the 90-day offer period will be stated on that building's flyer.

Please contact me if you have any questions.

Sincerely,

Joan Roehl  
Legal/Regulatory Affairs

/jr  
Enclosure

RECEIVED REGULATORY  
DATE: 9-28-99 TIME: 1:20  
DISTRIBUTED/INITIALS: qj  
DATE: 9-28-99 TIME: 1:30



[                      ] Tenant,

NEXTLINK just had its THIRD Anniversary of providing Memphis with local telecommunications services, and we are celebrating! We would like to invite you to join us in our celebration and take advantage of our success.

Sign up with NEXTLINK, and we will offer you up to THREE months free service. To take advantage of this exciting offer, choose one of our special local service offers below. Then, simply contact Rod at the number or e-mail address listed below to make it happen. Now that's a Birthday gift!

Again, we look forward to having you join in this special celebration.

All Our Best! NEXTLINK

# 3 More Reasons to Choose NEXTLINK

**3 Months FREE Service** When you sign a Three Year Contract

**2 Months FREE Service** When you sign a Two Year Contract

**1 Month FREE Service** When you sign a One Year Contract



Contact Rod Baine  
for further details.

388.8933 or

rbaine@nextlink.net

Do you have NEXTLINK Long Distance? Sign up now and get your

**Long Distance for 6¢ per minute.** That right, 6¢ per minute!!! \*

N E X T L I N K

\*These services are offered pursuant to and are governed by the terms and conditions set forth in NEXTLINK's state and federal forms and Customer Service Order and Agreement. Free offer limited to existing NEXTLINK Long Distance service and does not include taxes, fees, or other charges, such as long distance. \*Contract for local and long distance service required. Offer expires 12/31/99.



---

**SECTION 3 - REGULATIONS****3.15 Temporary Promotional Programs**

The Company may establish temporary promotional programs to introduce present or potential Customers to a service not previously received by Customers. During specific promotional periods, an offer may be made to reduce non-recurring charges on a non-discriminatory basis, up to the full amount, for optional products and services. Unless specifically approved elsewhere, this offer will not apply to single basic exchange access lines. Written notice of such offerings will be provided to the staff of the Tennessee Regulatory Authority prior to the date upon which the offer is to commence.

**3.16 Privacy**

All communications between customers are considered confidential in nature. The Company will take reasonable action to minimize the potential access of other entities to those communications. Operators or employees of the Company will not listen to any conversation between customers except when an operating necessity. Operators shall not repeat or divulge the nature of any local or long distance conversation, nor divulge any information inadvertently overheard.

---

Issued: August 25, 1997

Effective: September 9, 1997

By: Carolyn Heath, Regulatory Analyst  
Teleport Communications Group  
One Teleport Drive, Suite 300  
Staten Island, NY 10311

**SECTION 5- SUPPLEMENTAL SERVICES****5.8 Service and Promotional Trials****5.8.1 General**

The Company may establish temporary promotional programs wherein it may waive or reduce nonrecurring or recurring charges, to introduce a present or potential customer to a service not previously subscribed to by the customer.

**5.8.2 Regulations**

- A) Appropriate notification of the Trial will be made to all eligible customers and to the Commission. Appropriate notification may include direct mail, bill inserts, broadcast or print media, direct contact or other comparable means of notification.
- B) During a Service Trial, the service is provided to all eligible customers who ask to participate. Customers will be offered the opportunity to decline the trial service both in advance and during the trial. A customer can request that the designated service be removed at any time during the trial and not be billed a recurring charge for the period that the feature was in place. At the end of the trial, customers that do not contact the Company to indicate they wish to retain the service will be disconnected from the service at no charge.
- C) During a Promotional Trial, the service is provided to all eligible customers who ask to participate. Customers will be notified in advance of the opportunity to receive the service in the trial for free. A customer can request that the service be removed at any time during the trial and not be billed a recurring charge for the period that the service was in place. At the end of the trial, customers that do not contact the Company will be disconnected from the service.
- D) Customers can subscribe to any service listed as part of a Promotional Trial and not be billed the normal Connection Charge. The offering of this trial period option is limited in that a service may be tried only once per customer, per premises.
- E) The Company retains the right to limit the size and scope of a Promotional Trial.

Issued: August 25, 1997

Effective: September 9, 1997

By: Carolyn Heath, Regulatory Analyst  
Teleport Communications Group  
One Teleport Drive, Suite 300  
Staten Island, NY 10311

**SECTION 5- SUPPLEMENTAL SERVICES****5.8 Service and Promotional Trials (Cont'd.)****5.8.3 "Thank You For Trying Us" Promotional Offering**

From December 24, 1997 through March 1, 1998, new retail end-user Customers or existing retail Customers, installing new services at new service locations, who commit to the minimum requirements specified below for PrimeXpress, PrimePlex, PrimePath, key lines, or non-DID trunk services are eligible to receive a credit equal to the first month facility charges for those services. Credit will be applied on the first month's bill following installation of the service. Customers are responsible for payment of any associated governmental fees, surcharges, or taxes applicable to installation charges. Customer is responsible for all usage charges.

This promotion is valid for Customers in the TCG-Nashville and TCG-Chattanooga service areas only. Service must be installed by April 1, 1998.

To be eligible, Customers must order at least one PrimeXpress or one PrimePlex facility, for a minimum term commitment of one year, or 24 PrimePath business lines, 24 key lines, or 24 non-DID trunks for a minimum term commitment of one year. DID trunks on PrimeXpress or PrimePath facilities are excluded.

This promotional program is not valid with any other Company promotional program, or in conjunction with services under contract or priced on an Individual Case Basis. If the Customer terminates service before the end of the commitment period, the Customer will be responsible for early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment.

Issued: November 24, 1997

Effective: December 24, 1997

By: Carolyn Heath, Regulatory Analyst  
Teleport Communications Group  
One Teleport Drive, Suite 300  
Staten Island, NY 10311

**SECTION 5- SUPPLEMENTAL SERVICES****5.8    Service and Promotional Trials (Cont'd.)****5.8.4    "Fall Into Savings" Promotional Offering**

From December 24, 1997 through March 1, 1998, new retail end-user Customers or existing retail Customers, installing new services at new service locations, who commit to the minimum requirements specified below for PrimeXpress facilities, are eligible to receive a credit equal to the installation charges for those services. Credit will be applied on the first month's bill following installation of the service. Customers are responsible for payment of any associated governmental fees, surcharges, or taxes applicable to installation charges.

This promotion is valid for Customers in the TCG-Nashville and TCG-Chattanooga service areas only. To be eligible, Customers must order at least one PrimeXpress facility for a minimum term commitment of one year. Service must be installed by May 1, 1998.

This promotional program is not valid with any other Company promotional program, or in conjunction with services under contract or priced on an Individual Case Basis. If the Customer terminates service before the end of the commitment period, the Customer will be responsible for payment of any installation charges waived under this program. The Customer will also be charged early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment.

Issued: November 24, 1997

Effective: December 24, 1997

By: Carolyn Heath, Regulatory Analyst  
Teleport Communications Group  
One Teleport Drive, Suite 300  
Staten Island, NY 10311

**SECTION 5- SUPPLEMENTAL SERVICES****5.8 Service and Promotional Trials (Cont'd.)****5.8.5 "Thank You For the Order" Promotional Offering**

From December 24, 1997 through March 1, 1998, new retail end-user Customers or existing retail Customers, installing new services at new service locations, who commit to the minimum requirements specified below for PrimePath business lines are eligible to receive a credit equal to the installation charges for those services. Credit will be applied on the first month's bill following installation of the service. Customers are responsible for payment of any associated governmental fees, surcharges, or taxes applicable to installation charges.

This promotion is valid for Customers in the TCG-Nashville and TCG-Chattanooga service areas only. Service must be installed by May 1, 1998.

To be eligible, Customers must order at least six (6) PrimePath business lines, key system lines, or trunks, for a minimum term commitment of one year.

This promotional program is not valid with any other Company promotional program, or in conjunction with services under contract or priced on an Individual Case Basis. If the Customer terminates service before the end of the commitment period, the Customer will be responsible for payment of any installation charges waived under this program. The Customer will also be charged early termination charges equal to the facilities charge times the remaining months of the Customer's term commitment.

---

Issued: November 24, 1997

Effective: December 24, 1997

By: Carolyn Heath, Regulatory Analyst  
Teleport Communications Group  
One Teleport Drive, Suite 300  
Staten Island, NY 10311





---

SECTION 4 - PROMOTIONAL OFFERINGS

4.1 PROMOTIONAL OFFERINGS

The Company, from time to time, may make offerings of its services which may include waiving or reducing the charges for the promoted service. The promotional offerings may be limited as to the duration, the date and times of the offerings and the locations where the offerings are made. Promotions will be filed with the Tennessee Regulatory Authority for approval on one day's notice.

4.2 TRIAL SERVICE OFFERING

In the normal course of business, the Company, at its discretion may elect to offer certain services to Customers on a "Trial Basis". These trial offerings do not obligate the Company to continue the trial beyond a stated period or to offer said service as general tariffed offering in the future.

4.3 [Reserved for future use]

(D)  
(D)

---

Issued: August 5, 1997

Effective: September 5, 1997

Issued By: Carolyn Marek, Vice President Regulatory Affairs, Southeast Region  
P.O. Box 210706  
Nashville, TN 37221-0706

---

SECTION 4 - PROMOTIONAL OFFERINGS, CONT'D.

4.4 PROMOTIONAL LOCAL EXCHANGE PRICING

For six months from the effective date of this tariff, the Company will offer the following promotional rates:

PBX Trunks (Month to Month)

Hunting	N/C
Touch Tone	N/C
Facility Charge	N/C
Trunk Charge	\$33.50

Additional Discounts

1 year agreement, additional 10% discount  
2 year agreement, additional 15% discount  
3 year agreement, additional 20% discount

Discounts are not cumulative.

Examples:

10 trunks purchased for month-to-month service would be  $\$33.50 \times 10 = \$335/\text{month}$ .

10 trunks purchased for 1 year term would be  $\$33.50 \times .9 = \$30.15 \times 10$  or  $\$301.50/\text{month}$ .

10 trunks purchased for 2 years would be  $\$33.50 \times .85 = \$28.48 \times 10$  or  $\$284.80/\text{month}$

10 trunks purchased for 3 years would be  $\$33.50 \times .8 = \$26.80 \times 10$  or  $\$268.00/\text{month}$

One free month of service for all terms purchased.

---

Issued: April 21, 1997

Effective: May 14, 1997

Issued By: Carolyn Marek, Vice President Regulatory Affairs, Southeast Region  
P.O. Box 210706  
Nashville, TN 37221-0706



AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: June 24, 1998

EFFECTIVE: July 1, 1998

BY: Gary Graham-Tariff Administrator EXPIRATION DATE: SEPTEMBER 30, 1998  
SUPPLEMENTAL THIRD REVISED PAGE 1

---

L4. Special Arrangements

L4.2 Promotional Offerings

**AT&T Software Defined Network,  
Virtual Telecommunications Network Service,  
AT&T UniPlan  
AT&T Digital Link/IntraLATA COMBO Promotion**

Beginning July 1, 1998 and ending September 30, 1998 AT&T will offer the following promotion to Customers with locations utilizing dedicated access in Tennessee who are new or existing IntraLATA Customers of eligible services. Billed Telephone Numbers (BTNs) participating in this promotion must be installed by October 31, 1998.

AT&T will provide participating customers a coupon that gives the customer the choice of a Bill Credit or Vendor Option, based on the descriptions below. In order to qualify for this promotion, Customers must (a) redeem AT&T's promotional coupon and, (b) meet the usage requirement of the promotion as described below. Customers who qualify, may choose either the Bill Credit Option or the Vendor Option, but not both.

Eligible services are defined as the following: AT&T Software Defined Network (SDN) Service, AT&T Virtual Telecommunications Service (VTNS), and AT&T UniPlan Service. BTNs enrolling in this promotion are not eligible for any other IntraLATA promotion in Tennessee that would entitle them to a similar bill credit, during the subsequent 12-month period.

**Bill Credit Option**

New or existing customers with combined IntraLATA and AT&T Digital Link usage of at least \$8,000, per participating BTN, and identify AT&T as their primary carrier for AT&T Digital Link and IntraLATA usage, will receive a bill credit in the amount of \$750, payable in the 4th full billing month after enrollment. Customers have 12 consecutive billing months to achieve the \$8,000 usage commitment, per BTN. There is a maximum of 800 BTNs per MCN, per customer. This option is only available with dedicated access locations.

**Vendor Option**

New or existing customers with combined IntraLATA and AT&T Digital Link usage of at least \$10,000, per participating BTN, and identify AT&T as their primary carrier for AT&T Digital Link and IntraLATA usage, are eligible for goods procured from participating vendors. The coupon is valued at a maximum \$750 per participating BTN. Customers have 12 consecutive billing months to achieve the \$10,000 usage commitment, per BTN. There is a maximum of 800 BTN's per MCN, per customer. This option is only available with dedicated access locations.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 14, 1999

EFFECTIVE: July 15, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL FOURTH REVISED PAGE 2

L4. Special Arrangements

L4.2 Promotional Offerings

AT&T Digital Link 'PR' \$500.00 Bill Credit Promotion

Beginning July 15, 1999 and ending December 31, 1999 AT&T will offer a Digital Link 'PR' \$500.00 Bill Credit Promotion to new or existing AT&T Software Defined Network (SDN) Service, State Calling Service Option 1, College Connect, AT&T UniPlan Service, or AT&T Virtual Telecommunications Service (VTNS) customers with locations utilizing special access. Customers will receive a \$500.00 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment. All Customers participating in this promotion must request an install date of no later than January 31, 2000. Benefits under this promotion can only be obtained once per BTN.

Customers with special access locations agree to bill a minimum of \$600.00 in combined direct dial outbound IntralATA usage, Short-Haul Dedicated IntralATA usage and AT&T Digital Link usage, per participating BTN, during the 12-month period after enrollment in this promotion.

Customers enrolled in the CustomNet AT&T Digital Link 'PR' Bill Credit Promotion are ineligible to enroll in the CustomNet IntralATA 'PR' Bill Credit Promotion. Customers who have received similar promotional benefits under another IntralATA and/or AT&T Digital Link promotion within the prior six-month period are ineligible for this promotion.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 14, 1999

EFFECTIVE: July 15, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL THIRD REVISED PAGE 3

L4. Special Arrangements

L4.2 Promotional Offerings

AT&T Digital Link 'PR' \$750.00 Bill Credit Promotion

Beginning July 15, 1999 and ending December 31, 1999 AT&T will offer a Digital Link 'PR' \$750.00 Bill Credit Promotion to new or existing AT&T Software Defined Network (SDN) Service, AT&T Virtual Telecommunications Service (VTNS), and AT&T UniPlan Service customers with locations utilizing dedicated access. Customers will receive a \$750.00 bill credit per participating Billed Telephone Number (BTN) payable in the fourth full month's bill following enrollment. All Customers participating in this promotion must request an install date of no later than January 31, 2000. Benefits under this promotion can only be obtained once per BTN.

New or existing IntraLATA customers utilizing dedicated access, must agree to identify AT&T as their primary carrier for AT&T Digital Link and IntraLATA usage and bill a minimum of \$850.00 of combined IntraLATA and AT&T Digital Link usage, per BTN. Customers have 12 consecutive billing months to achieve the \$850.00 usage commitment, per BTN.

Customers who have received similar promotional benefits under another IntraLATA and/or AT&T Digital Link promotion within the prior six-month period are ineligible for this promotion.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 14, 1999

EFFECTIVE: July 15, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL SECOND REVISED PAGE 4

---

L4. Special Arrangements

L4.2 Promotional Offerings

AT&T Digital Link

Waiver for DID & MLN Trunk Establishment Charges Promotion

Beginning July 15, 1999 AT&T will waive the Direct Inward Dialing Service (DID) trunk establishment charges and Main Listed Number (MLN) trunk establishment charges for AT&T Digital Link Customers within the state of Tennessee. This promotion expires on December 31, 1999.



AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: August 31, 1999

EFFECTIVE: September 1, 1999

BY: Gary Graham-Tariff Administrator

EXPIRATION DATE: AUGUST 31, 2000

SUPPLEMENTAL FIRST REVISED PAGE 5

---

L4. Special Arrangements

L4.2 Promotional Offerings

ADL Directory Listing Promotion

Beginning September 1, 1999, and ending August 31, 2000, AT&T will waive all Directory Listing charges for new and existing AT&T Digital Link customers within the State of Tennessee.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: February 12, 1999

BY: Gray Graham-Tariff Administrator

EFFECTIVE: February 13, 1999

EXPIRATION DATE: JUNE 30, 1999

SUPPLEMENTAL ORIGINAL PAGE 7

---

L4. Special Arrangements

L4.2 Promotional Offerings

"Welcome to AT&T Local Service" Promotional Program

From February 13, 1999 through June 30, 1999 AT&T will offer new retail end-user customers who order AT&T Business Local Service a credit equal to the Service Order Charge and standard installation charges for these services. Customers will also be credited for any charges incurred for the dispatch of Company technicians to the Customer's location(s) in connection with the initial installation of their service. Customers are responsible for payment of any associated governmental fees, surcharges, or taxes applicable to the credited charges. Credit will be applied to the first full month's bill following installation of service.

This promotion is only valid where facilities permit. Service must be installed no later than October 30, 1999.

This promotional program is not valid with any other Company promotional program or in conjunction with services under contract or priced on an Individual Case Basis. If the customer terminates service before the end of the commitment period, the Customer will be responsible to pay any of the charges credited under this program.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: February 12, 1999

BY: Gray Graham-Tariff Administrator

EFFECTIVE: February 13, 1999

EXPIRATION DATE: JUNE 30, 1999

SUPPLEMENTAL ORIGINAL PAGE 8

---

L4. Special Arrangements

L4.2 Promotional Offerings

"Record Order Charge" Promotional Program

From February 13, 1999 through June 30, 1999, existing AT&T Business Local Service customers who incur Record Order Charges or any charge associated with changing their directory listings will receive a Credit equal to these charges. Customers are responsible for payment of any associated governmental fees, surcharges, or taxes applicable to the Record Order Change charge. Credit will be applied to the first full month's bill following the Record Order change.

This promotion is only valid where facilities permit. Service must be installed no later than October 30, 1999.

This promotional program is not valid with any other Company promotional program or in conjunction with services under contract or priced on an Individual Case Basis.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: February 12, 1999

EFFECTIVE: February 13, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: JUNE 30, 1999

SUPPLEMENTAL ORIGINAL PAGE 9

---

L4. Special Arrangements

L4.2 Promotional Offerings

"PIC Change Charge" Promotional Program

AT&T will offer the following promotion from February 13, 1999 through June 30, 1999. New and existing AT&T Business Local Service customers who switch either their interLATA or intraLATA (where available) service from their pre-subscribed carrier to AT&T will receive a credit equal to the PIC Change Charge for each line or trunk that the customer switches to AT&T. Customers are responsible for payment of any associated governmental fees, surcharges, or taxes applicable to the PIC Change charge. Credit will be applied to the first full month's bill following the PIC change.

This promotion is only valid where facilities permit. Service must be installed no later than October 30, 1999.

This promotional program is not valid with any other Company promotional program or in conjunction with services under contract or priced on an Individual Case Basis. If the customer terminates service before the end of the commitment period, the Customer will be responsible to pay any of the charges credited under this program.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: February 24, 1999

EFFECTIVE: February 25, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: APRIL 30, 1999

SUPPLEMENTAL ORIGINAL PAGE 10

L4. Special Arrangements

L4.2 Promotional Offerings

AT&T Digital Link Flat Fee Calling Promotion

This promotion is available to new and existing AT&T Digital Link customers except AT&T Digital Link customers who also subscribe to AT&T CustomNet Service provided under this Company's Custom Network Services tariff. The promotion will commence on February 25, 1999 and conclude on April 30, 1999. Facilities provisioned under this promotion must be in the AT&T provisioning system by May 15, 1999 and must have a customer requested installation date on or before August 1, 1999.

Customers of AT&T Digital Link Direct Outward Dialing (DOD) Service and either Direct Inward Dialing (DID) or Main Listed Number (MLN) service will pay a one-time DOD flat rate usage fee of \$4,960.00 per T1.5 facility for twelve months of DOD usage commencing with the provisioning date to the T1.5. Customers who subscribe to AT&T Digital Link's DOD Service only, will pay a one-time DOD flat rate usage fee of \$5,580.00 per T1.5 facility for twelve months of DOD usage commencing with the provisioning date to the T1.5. Enrollment in this promotion does not affect the Customer's responsibility for AT&T Digital Link's non-recurring or monthly recurring charges. Customers will also receive a \$1200 credit, per T1.5 installed for use with AT&T Digital Link Service with DID during the promotion period. The credit is payable in the 2nd month after installation and enrollment in this promotion.

Unless the customer notifies AT&T in writing at least thirty (30) days prior to the end of the twelve month period, at the end of the twelve month period the customer will be charged the then-tariffed AT&T Digital Link Service monthly flat rate charge. If no such charge is tariffed at that time, the customer will be charged the then tariffed per minute rates. No portion of the charge paid pursuant to this promotion will be refunded if the customer terminates AT&T Digital Link Service prior to the end of the twelve month period.

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 30, 1999

EFFECTIVE: August 1, 1999

BY: Gray Graham-Tariff Administrator EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL ORIGINAL PAGE 12

L4. Special Arrangements

L4.2 Promotional Offerings

Digital Link Mileage Band Promotion

AT&T will offer the following promotional intraLATA rates to all AT&T new and existing Software Defined Network (SDN), AT&T UniPlan, UniPlan FlatRate Pricing Option, UniPlan Basic Service Option, UniPlan OneRate Service, UniPlan OneRate Service Pricing Option II, AT&T CustomNet and Virtual Telecommunications Network Service (VTNS), customers using special/dedicated access for their intraLATA traffic. To be eligible for this promotion, Customers must enroll before December 31, 1999. The promotion expires December 31, 1999.

A. SDN Schedule B

Rate Mileage		Initial 18 Seconds or Fraction			Rates Each Additional 6 Seconds or Fraction		
		Day	Eve	Ngt	Day	Eve	Ngt
0-45		\$0.0168	\$0.0168	\$0.0168	\$0.0056	\$0.0056	\$0.0056

B. SDN Schedule C

Rate Mileage		Initial 18 Seconds or Fraction			Rates Each Additional 6 Seconds or Fraction		
		Day	Eve	Ngt	Day	Eve	Ngt
0-45		\$0.0168	\$0.0168	\$0.0168	\$0.0056	\$0.0056	\$0.0056

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 30, 1999

EFFECTIVE: August 1, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL ORIGINAL PAGE 13

L4. Special Arrangements

L4.2 Promotional Offerings

Digital Link Mileage Band Promotion (Cont'd)

C. UniPlan with Special Access

		Initial			Each Additional		
		30 Seconds or Fraction			6 Seconds or Fraction		
Rate							
Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0270	\$0.0270	\$0.0270	\$0.0054	\$0.0054	\$0.0054	

D. UniPlan FlatRate Pricing Option with Special Access

		Initial			Each Additional		
		30 Seconds or Fraction			1 Second or Fraction		
Rate							
Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0300	\$0.0300	\$0.0300	\$0.0010	\$0.0010	\$0.0010	

E. UniPlan Basic Service Option with Special Access

		Initial			Each Additional		
		30 Seconds or Fraction			6 Seconds or Fraction		
Rate							
Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0290	\$0.0290	\$0.0290	\$0.0058	\$0.0058	\$0.0058	

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 30, 1999

EFFECTIVE: August 1, 1999

BY: Gray Graham-Tariff Administrator EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL ORIGINAL PAGE 14

L4. Special Arrangements

L4.2 Promotional Offerings

Digital Link Mileage Band Promotion (Cont'd)

F. UniPlan OneRate Service with Special Access

		Initial			Rates		
		30 Seconds or Fraction			Each Additional 1 Second or Fraction		
Rate Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0270	\$0.0270	\$0.0270	\$0.0009	\$0.0009	\$0.0009	

G. UniPlan OneRate Service Pricing Option II with Special Access

		Initial			Rates		
		30 Seconds or Fraction			Each Additional 1 Second or Fraction		
Rate Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0270	\$0.0270	\$0.0270	\$0.0009	\$0.0009	\$0.0009	

H. CustomNet Service with Special Access

		Initial			Rates		
		30 Seconds or Fraction			Each Additional 1 Second or Fraction		
Rate Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0330	\$0.0330	\$0.0330	\$0.0011	\$0.0011	\$0.0011	



AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: July 30, 1999

EFFECTIVE: August 1, 1999

BY: Gray Graham-Tariff Administrator

EXPIRATION DATE: DECEMBER 31, 1999

SUPPLEMENTAL ORIGINAL PAGE 15

L4. Special Arrangements

L4.2 Promotional Offerings

Digital Link Mileage Band Promotion (Cont'd)

I. VTNS Schedule A1 with Special Access

		Initial			Rates		
		18 Seconds or Fraction			Each Additional 6 Seconds or Fraction		
Rate Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0162	\$0.0162	\$0.0162	\$0.0054	\$0.0054	\$0.0054	

J. VTNS Schedule B1 with Special Access

		Initial			Rates		
		18 Seconds or Fraction			Each Additional 6 Seconds or Fraction		
Rate Mileage	Day	Eve	Ngt	Day	Eve	Ngt	
0-45	\$0.0162	\$0.0162	\$0.0162	\$0.0054	\$0.0054	\$0.0054	

AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.  
LOCAL EXCHANGE SERVICES TARIFF  
TENNESSEE

ISSUED: August 19, 1999

EFFECTIVE: August 20, 1999

BY: Gray Graham-Tariff Administrator EXPIRATION DATE: SEPTEMBER 30, 2000  
SUPPLEMENTAL ORIGINAL PAGE 16

---

L4. Special Arrangements

L4.2 Promotional Offerings

AT&T Digital Link Flat Fee Thrifty Calling Promotion

This promotion is available to new and existing AT&T Digital Link customers except customers who subscribe to AT&T Digital Link in conjunction with AT&T CustomNet Service provided under this Company's Custom Network Services tariff. The promotion will commence on August 20, 1999 and end on September 30, 2000. Enrollment will conclude on June 30, 2000. Facilities provisioned under this promotion must be in the AT&T provisioning system by July 15, 2000 and must have a customer requested installation date on or before September 30, 2000.

Customers who subscribe to AT&T Digital Link's DOD Service, will pay a monthly recurring DOD flat rate usage fee of \$385.00 per T1.5 facility or \$28.60 per DS0 facility for one month of DOD usage commencing with the provisioning date to the T1.5. The customer will pay the flat rate charge for every T1.5 or DS0 facility designated for AT&T Digital Link DOD, DID, MLN or 8YY service. If DS0 level Flat Fee service is selected, DS0 facilities will be channelized as a separate trunk group. Enrollment in this promotion does not affect the Customer's responsibility for AT&T Digital Link's non-recurring or monthly recurring charges.

The customer will allow AT&T to review customers local usage and increase the number of flat rate usage fees, if it appears the customer is using more DS0s or DS1s than they are paying for under the flat rate plan.

Unless the customer notifies AT&T in writing at least thirty (30) days prior to September 30, 2000, at the expiration of this promotion the customer will revert to the then tariffed AT&T Digital Link Service monthly flat rate charge. If no such charge is tariffed at that time, the customer will be charged the then tariffed per minute rates.

RECEIVED



Carroll Wallace  
State Regulatory Manager

100 JAN 4 PM 4 24

Suite 1830  
414 Union Street  
Nashville, TN 37219  
615 242-2813  
FAX 615 242-6856

EXECUTIVE SECRETARY

January 5, 2000

TARIFF FILING

00 005

Ms. Darlene Standley  
Deputy Chief, Telecommunications  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

Dear Ms. Standley:

Enclosed for filing with the Tennessee Regulatory Authority are the original and five (5) copies of revisions to the Local Exchange Services Tariff of AT&T Communications of the South Central States, Inc.

LOCAL EXCHANGE SERVICES TARIFF

Section L4.2

Fifth Revised Page 2

AT&T is offering the following promotion in the state of Tennessee:

-- AT&T Digital Link 'PR' \$500.00 Bill Credit Promotion

If you have any questions, I can be reached on (615) 242-2813.

Yours truly,

*Carroll Wallace*  
*ma*

Attachment



Recycled Paper

## **EXHIBIT 8**

SEE COURT OF APPEALS RULES 11 AND 12

**Mina WOODS and Robert Woods, Plaintiffs/  
Appellants,**

**v.**

**WORLD TRUCK TRANSFER, INC., and  
Edward J. Seigham, Defendants/Appellees.**

**No. M1997-00068-COA-R3-CV.**

Court of Appeals of Tennessee.

Dec. 3, 1999.

Appeal from the Davidson County Circuit Court at  
Nashville, Tennessee, No. 93C-280; Barbara N.  
Haynes, Judge.

Stanley H. Less, Memphis, TN, for plaintiffs/  
appellants.

John Thomas Feeney, Cynthia DeBula Baines,  
Feeney & Lawrence, Nashville, TN, for defendants/  
appellees.

#### OPINION

KOCH.

\*1 This appeal involves a personal injury action that was dismissed because the Clerk of the Circuit Court for Davidson County refused to accept and file a summons that had not been prepared on an original form provided by the clerk. By the time the plaintiff provided another summons acceptable to the clerk, the time for filing the complaint and the summons had elapsed. Accordingly, on motion of one of the defendants, the Circuit Court for Davidson County dismissed the personal injury claim because it was time-barred. We have determined that the clerk's office exceeded its authority when it declined to accept and file the summons and, therefore, that the trial court erred by dismissing the complaint. Accordingly, we vacate the order dismissing the personal injury claims and remand the case for further proceedings.

#### I.

Mina Woods was traveling on Interstate 65 in Nashville when her automobile was struck by a tractor trailer truck. The force of the collision drove

Ms. Woods's automobile into a concrete median. After striking the median, Ms. Woods's automobile ricocheted back into the path of another oncoming tractor trailer truck and then careened over a grassy embankment. Ms. Woods was seriously injured, and her automobile was substantially damaged.

On February 1, 1993, Ms. Woods and her husband filed suit in the Circuit Court for Davidson County against World Truck Transfer, Inc., the owner of the truck that first struck her automobile, and Edward Seigham, the driver of the truck. Ms. Woods had difficulty serving World Truck Transfer and Mr. Seigham because they were Ohio residents. [FN1] The original process to World Truck Transfer was returned unserved on February 23, 1993, marked "forwarding order expired." Likewise, the original process to Mr. Seigham was returned unserved on March 25, 1993, marked "unclaimed." Alias process issued on Mr. Seigham was also returned unserved in August 1993, marked "moved."

FN1. Ms. Woods undertook to serve both defendants through the Secretary of State in accordance with Tenn.Code Ann. § § 20-2-201, -220 (1994 & Supp.1999).

Ms. Woods and her husband undertook to save their personal injury claims from untimeliness by recommencing their action against both World Truck Transfer and Mr. Seigham pursuant to Tenn. R. Civ. P. 3. Accordingly, their lawyer, who practices in Memphis, mailed a new complaint and summons to the trial court clerk. The clerk received the suit papers on January 27, 1994. While the clerk's office filed the new complaint on January 27, 1994, it declined to accept or file the summonses accompanying the complaint because they were prepared on photocopies of the original printed summons form used by the circuit courts in Davidson County. In a telephone conversation, the chief deputy clerk requested Ms. Woods's lawyer to provide new summonses on original forms and agreed to mail these forms to Memphis. The lawyer prepared new summonses, and they were received by the trial court clerk on February 18, 1994.

As with the original suit, the process in the second case was initially returned unserved. The process issued to Mr. Seigham was returned on March 11, 1994, marked "moved, not forwardable," and the

original process to World Truck Transfer was returned marked "forwarding order expired." Stymied by their continuing inability to effect service through the Secretary of State, Ms. Woods and her husband placed alias summonses in the hands of a private process server in Ohio who was eventually able to locate and serve World Truck Transfer on June 7, 1994. All efforts to serve Mr. Seigham proved unsuccessful.

\*2 World Truck Transfer promptly moved for a partial summary judgment on the ground that the second complaint was untimely under the statute of limitations in Tenn.Code Ann. § 28-3-104(a)(1) (Supp. 1999). World Truck Transfer argued that Ms. Woods and her husband had not successfully recommenced their original action within one year after the issuance of the original process because the circuit court clerk had not accepted the summonses in their recommenced action until February 18, 1994--more than one year after the issuance of the original process. In response, Ms. Woods and her husband asserted that the unwillingness of the clerk's office to accept and file the summonses was an "omission" or "clerical mistake" correctable under Tenn. R. Civ. P. 60.01. Accordingly, they moved to "correct the record" to show that they had delivered both their complaint and the summonses to the trial court clerk in a timely manner. The trial court eventually denied Ms. Woods's Tenn. R. Civ. P. 60.01 motion and granted World Truck Transfer's partial summary judgment motion, with regard to the personal injury claims.

While the motions in the second proceeding were pending, Ms. Woods and her husband had pluries process issued against World Truck Transfer in the moribund first suit. Their private process server served World Truck Transfer with this process on August 4, 1994. In the spring of 1995, World Truck Transfer moved to dismiss the first suit based on the running of the statute of limitations and the lack of service. After the trial court dismissed the first suit on August 29, 1996, Ms. Woods and her husband filed a timely notice of appeal but failed to file an appeal bond. When their lawyer failed to appear at a show cause hearing, the trial court dismissed Ms. Woods's and her husband's appeal from the dismissal of their first complaint for failure to file an appeal bond. The trial court later declined to set aside its dismissal of the first appeal after Ms. Woods belatedly filed an appeal bond. Ms. Woods

and her husband appealed from this order.

Ms. Woods and her husband let their second renewed complaint languish while attempting to resurrect their first complaint. In January 1997, the trial court dismissed what was left of the second suit for lack of prosecution. At that point, Ms. Woods and her husband, completely out of court on all their claims in both actions, filed a notice of appeal in the second suit. In the interests of judicial economy, we ordered that the appeals involving the first and second suits be consolidated for disposition.

## II. THE DISMISSAL OF THE SECOND COMPLAINT

The primary issue confronting us concerns the legal effect of the trial court clerk's refusal to accept and file the summonses accompanying the second complaint filed by Ms. Woods and her husband. While Ms. Woods and her husband frame the issue with reference to the trial court's denial of their Tenn. R. Civ. P. 60.01 motion, their substantive arguments address the same question. Accordingly, we focus first on the trial court clerk's actions regarding the summonses accompanying the second complaint. We have determined that the trial court clerk erred by declining to accept and file these summonses.

### A. THE EFFECT OF THE CLERK'S REFUSAL TO ACCEPT THE SUMMONS

\*3 Ms. Woods and her husband filed suit against World Truck Transfer and Mr. Seigham within one year after her cause of action accrued. After they were unable to serve either World Truck Transfer or Mr. Seigham, they decided to keep their suit alive by recommencing the action within one year from the issuance of the original process. See Tenn. R. Civ. P. 3(2). At that time, Tenn. R. Civ. P. 3 provided that "[a]ll civil actions are commenced by filing a complaint and summons with the clerk of the court." Thus, when Ms. Woods and her husband "recommenced" their action in 1994, they were required to file a complaint and the accompanying summonses within one year from the issuance of the original process.

The Memphis lawyer representing Ms. Woods and

her husband mailed the trial court clerk a new complaint and the accompanying summonses well before Tenn. R. Civ. P. 3(2)'s deadline. The summonses were photocopies of the original summons form used by the trial court clerk. The trial court clerk accepted and filed the new complaint but declined to accept and file the summonses because they were photocopies, as opposed to original, summons forms. [FN2] By the time the lawyer provided summonses acceptable to the clerk, the time for recommencing the action had lapsed.

FN2. These photocopied summonses are not part of the record. Accordingly, we do not know whether they were photocopied on two sides of a single sheet of paper or whether the front and back of the summonses were copied separately on two sheets of paper. If the photocopied summonses were on a single sheet of paper, it would have been the functional equivalent of an original printed summons. If the photocopied summonses were on two sheets of paper, it might have been more difficult to use because one sheet could be separated from the other. There is no indication in this record that the summonses submitted by the lawyer representing Ms. Woods and her husband were functionally defective or that they did not contain the required information.

As a result of the trial court clerk's refusal to accept their summonses, Ms. Woods and her husband did not successfully recommence their action because they failed to file a new complaint and summons within one year after the issuance of the original process. Their failure to do so meant that they could not "rely upon the original commencement to toll the running of a statute of limitations." See Tenn. R. Civ. P. 3. Preventing Ms. Woods and her husband from taking advantage of the relation-back feature of Tenn. R. Civ. P. 3 caused their renewed complaint to be filed late. Thus, the correctness of the dismissal of the renewed complaint filed by Ms. Woods and her husband hinges on the correctness of the trial court clerk's refusal to accept and file the photocopied summonses received by the clerk on January 27, 1994.

**B.**

**LEGAL REQUIREMENTS GOVERNING THE  
FORM AND CONTENT OF SUMMONSES**

The term "process," as generally understood in the

context of legal proceedings, means the command issued in the state's name to effect the jurisdiction of a court either at the beginning of, during, or at the end of a lawsuit. See Sam B. Gilreath, *Caruthers' History of a Lawsuit*, § 29 (6th ed.1937). In courts of record, the original, or leading, process used in most cases is the "summons." A summons is nothing more than a formal written notice to the defendant to appear and to answer the plaintiff's complaint.

When Ms. Woods and her husband filed their second complaint, the legal requirements concerning the content of a summons were set out in the Constitution of Tennessee, [FN3] the statutes, [FN4] and the Tennessee Rules of Civil Procedure. [FN5] While these provisions dictate the information to be included in a summons and who must sign a summons, they are silent concerning how the required information should be arranged in the summons document itself. Thus, the Advisory Commission Comment to the 1992 amendment to Tenn. R. Civ. P. 3 points out that "there is no officially prescribed form for a summons" and provides a recommended format for a summons in order to achieve state-wide uniformity.

FN3. See Tenn. Const. art. VI, § 12.

FN4. See Tenn.Code Ann. § 18-1-105(a)(1) (1994); Tenn.Code Ann. § 20-2-103(a) (1994); Tenn.Code Ann. § 26-2-114(c) (1980).

FN5. See Tenn. R. Civ. P. 4.02.

\*4 Nothing in the applicable statutes, rules, or constitutional provisions requires that a summons be prepared only on pre-printed forms provided by a clerk's office or that the contents of a summons appear on the front and back of a single sheet of paper, as opposed to two sheets of paper. Clearly, the primary concern should be the content of the summons, not its form or appearance, as long as the form or appearance of the summons does not defeat its purpose or materially interfere with its use. A summons should not be considered invalid as long as the form used is reasonable and contains all the information required by law. See *Hometown Lumber and Hardware, Inc. v. Koelling*, 816 S.W.2d 914, 916 (Mo.1991); *Young v. Seaway Pipeline, Inc.*, 576 P.2d 1144, 1147 (Okla.1977).

**C.**

## THE RESPONSIBILITIES OF THE TRIAL COURT CLERK

Trial court clerks hold a public office established and defined by the Constitution of Tennessee and statutory law. They serve as the principal administrative aides to the trial courts. Trial court clerks and their deputies provide assistance with courtroom administration, records management, collection of fees, maintenance of case files and minutes, and docket scheduling. See Frederic S. LeClercq, *The Tennessee Court System*, 8 Mem. St. U.L.Rev. 185, 260-64 (1978). Thus, they are officers of the court, rather than agents of the parties. See *Kennedy v. Kennedy*, 81 Tenn. 24, 25 (1884); *Burford v. Memphis Bulletin Co.*, 56 Tenn. (9 Heisk.) 691, 696 (1872).

A trial court clerk is a ministerial, as opposed to judicial, officer. See *Morris v. Smith*, 30 Tenn. (11 Hum.) 133, 134 (1850). Included among a clerk's ministerial duties are accepting and filing pleadings and documents, [FN6] and issuing summonses. [FN7] As a ministerial officer, a trial court clerk does not have the authority to reject pleadings, papers, and other documents for lack of conformity with formal requirements. See *McClellon v. Lone Star Gas Co.*, 66 F.3d 98, 101 (5th Cir.1995); *Rojas v. Cutsforth*, 79 Cal.Rptr.2d 292, 293 (Ct.App.1998); *Ferlita v. State*, 380 So.2d 1118, 1119 (Fla.Dist.Ct.App.1980); *Dwyer v. Clerk of Dist. Court for Scott County*, 404 N.W.2d at 170; *Director of Fin. v. Harris*, 602 A.2d 191, 194 (Md.Ct.Spec.App.1992); *Bowman v. Eighth Judicial Dist.*, 728 P.2d 433, 435 (Nev.1986). This task is more properly suited to judicial officers. See *Price v. Obayashi Haw. Corp.*, 914 P.2d 1364, 1372 (Haw.1996).

FN6. See Tenn.Code Ann. § 18-1-105(a)(8) (Supp.1999); Tenn.Code Ann. § 18-5-102 (1994); see also *Lewis v. Superior Court*, 70 Cal.Rptr.2d 598, 599 (Ct.App.1998); *Gorod v. Tabachnick*, 696 N.E.2d 547, 548 (Mass.1998); *Stokes v. Aberdeen Ins. Co.*, 917 S.W.2d 267, 268 (Tex.1996).

FN7. See Tenn.Code Ann. § 18-1-105(a)(1); Tenn.Code Ann. § 18-5-102(3); see also *City of Des Moines v. Iowa Dist. Court for Polk County*, 431 N.W.2d 764, 766 (Iowa 1988); *Beck v. Voncannon*, 75 S.E.2d 895, 898 (N.C.1953); *R.A.G. v. State*, 870 S.W.2d 79, 82 (Tex.App.);

rev'd on other grounds, *In re R.A.G.*, 866 S.W.2d 199 (Tex.1993).

The parties and their lawyers are ultimately responsible for complying with the filing requirements governing papers filed in the trial court. When presented with an apparently non-conforming paper, a trial court clerk should stamp it received or filed and then should notify the filing party of the problem with the paper. See *Bing Constr. Co. v. Nevada Dep't of Taxation*, 817 P.2d 710, 711 (Nev.1991); *White v. Katz*, 619 A.2d 683, 687 (N.J.Super.App.Div.1993). The clerk should leave it to others to question the legal sufficiency of any paper tendered for filing. Thus, the parties themselves should be the ones to present the sufficiency of a paper to the court for determination. See *Barker v. Heekin Can Co.*, 804 S.W.2d 442, 443-44 (Tenn.1991) (noting that the party seeking to challenge the sufficiency of process should present the issue to the court by motion).

## D. WORLD TRUCK TRANSFER'S SUMMARY JUDGMENT

\*5 We now consider whether World Truck Transfer was entitled to a summary judgment in light of our conclusions regarding the form and content of summonses and the responsibilities of trial court clerks for filing documents. Even though the facts are essentially undisputed, we have determined that the trial court erred by denying the Tenn. R. Civ. P. 60.01 motion filed on behalf of Ms. Woods and her husband. Had the trial court corrected the record to show that Ms. Woods and her husband filed a summons with the trial court on January 27, 1994, World Truck Transfer would not have been able to demonstrate that it was entitled to a judgment as a matter of law on the statute of limitations defense asserted in its summary judgment motion.

Summary judgments are appropriate only when there are no genuine factual disputes with regard to the claim or defense embodied in the summary judgment motion and when the moving party is entitled to a judgment as a matter of law. See Tenn. R. Civ. P. 56.04; *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn.1997); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn.1995). Because summary judgments enjoy no presumption of correctness on appeal, see *City of Tullahoma v. Bedford County*, 938 S.W.2d



408, 412 (Tenn.1997), courts reviewing them must make a fresh determination concerning whether the requirements of Tenn. R. Civ. P. 56 have been satisfied. See *Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn.1997); *Mason v. Seaton*, 942 S.W.2d 470, 472 (Tenn.1997).

The trial court's decision to grant summary judgment in this case was colored by an overly strict interpretation of the Tennessee Rules of Civil Procedure and an overly generous view of the powers of a trial court clerk. The Tennessee Rules of Civil Procedure should be interpreted to prevent parties from having their claims time-barred as a result of actions of the trial court clerk or other officials over whom they have no control. See *Hine v. Commercial Carriers, Inc.*, 802 S.W.2d 218, 220 (Tenn.1990); *General Elec. Supply Co. v. Arlen Realty & Dev. Corp.*, 546 S.W.2d 210, 214 (Tenn. 1977). When a paper or other document is presented for filing, the trial court clerk should accept the document, rather than refuse to accept and file the document because of perceived shortcomings in its form or content.

This record contains undisputed evidence that the trial court clerk received summonses from Ms. Woods and her husband on January 27, 1994 that contained all the information required to be included on a summons. The trial court clerk erroneously refused to accept the summonses, but the failure to mark the summonses "filed" on January 27, 1994 should not prejudice either Ms. Woods or her husband. A pleading should be deemed filed when it is handed to an employee in the clerk's office with authority to receive documents to be filed. See *Rush v. Rush*, 97 Tenn. 279, 283, 37 S.W. 13, 14 (1896); *Montgomery v. Buck*, 25 Tenn. (6 Hum.) 416, 417 (1846); *Fry v. Cermola*, No. 03A01-9507-JV-00246, 1996 WL 30903, at \*3 (Tenn.Ct.App. Jan. 29, 1996) (No Tenn. R.App. P. 11 application filed).

\*6 Based on the undisputed evidence that Ms. Woods and her husband submitted summonses to the trial court clerk on January 27, 1994, the trial court clerk should have granted their Tenn. R.App. P. 60.01 motion to correct the record to reflect that they filed a renewed complaint and summonses on January 27, 1994. Once this correction is made, the record will show that Ms. Woods and her husband renewed their complaint within one year after the

issuance of the original process in the first lawsuit and, accordingly, that they are entitled to take advantage of the relation-back features in Tenn. R. Civ. P. 3. Because Ms. Woods and her husband are entitled to take advantage of their first complaint's filing date, World Truck Transfer is not entitled to a judgment as a matter of law on its defense that their second complaint was time-barred.

### III.

#### THE FATE OF THE REMAINING CLAIMS

We will consider several other issues raised in this appeal in an effort to simplify and expedite the resolution of the remaining issues after this case is remanded to the trial court. These issues involve (A) the status of the first complaint, (B) the status of the claims against Mr. Seigham, and (C) the status of the property damage claims against World Truck Transfer. We have determined that none of these claims have survived the five-year procedural snarl resulting from the unsuccessful efforts to serve World Truck Transfer and Mr. Seigham.

#### A.

##### THE STATUS OF THE FIRST COMPLAINT

Ms. Woods and her husband decided to keep their claims against World Truck Transfer and Mr. Seigham alive by filing a renewed complaint as permitted by Tenn. R. Civ. P. 3. Ordinarily, the maneuvering regarding the first complaint would become secondary once the renewed complaint is filed. In this case, however, for reasons that are not readily apparent, the lawyer representing Ms. Woods and her husband had pluries process issued for the first complaint after successfully obtaining service of the second complaint on World Truck Transfer.

World Truck Transfer moved to dismiss the first complaint based on the statute of limitations and the lack of service. The "lack of service" argument is somewhat mystifying in light of the evidence that World Truck Transfer had, in fact, been served with both the first complaint and the second complaint by the time it filed the motion to dismiss. The trial court dismissed the first complaint on the ground that the "plaintiffs have failed to demonstrate the requisite diligence to require a tolling of the statute of limitations, and that service of process upon defendants has not been effectuated." Later, the trial court dismissed Ms. Woods's and her husband's

appeal from the dismissal of the first complaint because they had not filed a timely appeal bond.

1.

THE TRIAL COURT'S DISMISSAL OF THE  
APPEAL

Ms. Woods and her husband filed a timely notice of appeal from the trial court's order dismissing their first complaint. They did not, however, file an appeal bond with their notice of appeal as required by Tenn. R.App. P. 6. In accordance with Rule 37.06 of the Local Rules for the Circuit Court, Chancery Court, Criminal Court and Probate Court of Davidson County, the trial court issued an order directing Ms. Woods and her husband to show cause why their appeal should not be dismissed for failure to file an appeal bond. The trial court ordered the appeal dismissed after neither Ms. Woods, nor her husband, nor their lawyer appeared at the show cause hearing. Even though Ms. Woods and her husband filed an appeal bond four days later, the trial court refused to set aside its order dismissing the appeal.

\*7 The trial court was not empowered to dismiss the appeal from its dismissal of the first complaint. A trial court's jurisdiction over a case is significantly curtailed thirty days after it enters a final order. Its authority over the case, if any, must be defined either by rule or statute. Because no rule or statute empowers a trial court to dismiss an appeal, [FN8] only appellate courts can consider and act on motions to dismiss an appeal. Thus, the trial court should not have dismissed the appeal. See *Dunlap v. Dunlap*, 996 S.W.2d 803, 810 (Tenn.Ct.App.1998); *Muesing v. Ferdowski*, No. 01A01-9005-CV-00156, 1991 WL 20403, at \*2 (Tenn.Ct.App. Feb. 21, 1991) (No Tenn. R.App. P. application filed).

FN8. A local court rule cannot take precedence over an applicable statute or generally applicable procedural rule promulgated by the Tennessee Supreme Court. See Tenn.Code Ann. § 16-2-511 (1994); Tenn. S.Ct. R. 18; *Brown v. Daly*, 884 S.W.2d 121, 123-24 (Tenn.Ct.App.1994).

The Tennessee Rules of Appellate Procedure should be construed to enable, rather than defeat, the consideration of appeals on their merits. See Tenn. R.App. P. 1. Accordingly, we view the dismissal of an appeal as a harsh sanction that should not be

casually imposed. See *Trakas v. Quality Brands, Inc.*, 759 F.2d 185, 186-87 (D.C.Cir.1985). The appellate rules and the decisions construing them make clear that once an appeal bond has been filed--even if late--the courts should waive the strict application of Tenn. R.App. P. 6. See Tenn. R.App. P. 3(e); *Bush v. Bradshaw*, 615 S.W.2d 157, 158 (Tenn.1981). Thus, had the appeal bond issue been presented to us, we would have accepted the late appeal bond and would have permitted the appeal to proceed on its merits.

2.

THE DISMISSAL OF THE FIRST COMPLAINT

We now turn to the trial court's dismissal of the first complaint. We have determined that the trial court reached the correct result but for the wrong reason. [FN9] The trial court should have dismissed the first complaint simply because the first complaint was no longer a viable pleading after Ms. Woods and her husband preserved their claims against World Truck Transfer and Mr. Seigham by filing a renewed complaint.

FN9. This court may affirm a trial court's decision that reaches the correct result, irrespective of the trial court's reasons. See *Continental Cas. Co. v. Smith*, 720 S.W.2d 48, 50 (Tenn.1986); *Kaylor v. Bradley*, 912 S.W.2d 728, 735 n. 6 (Tenn.Ct.App.1995); *Clark v. Metropolitan Gov't*, 827 S.W.2d 312, 317 (Tenn.Ct.App.1991).

Tenn. R. Civ. P. 3, as it read in 1994, provided plaintiffs with two alternatives for keeping their claims alive. They could either continue to obtain new process within six months from the issuance of the previous process or recommence the action within one year from the issuance of the original process by filing a new complaint and summons. It would have been duplicative for a plaintiff to undertake to do both simultaneously.

Ms. Woods and her husband kept the claim against World Truck Transfer alive by timely recommencing their action within one year following the issuance of the original process. It was not necessary for them to also undertake to serve World Truck Transfer with the first complaint as well. In addition to being unnecessary, their effort to serve the first complaint was to no avail because it did not comply with Tenn. R. Civ. P. 3. The pluries process was issued on July 20, 1994; while the

previous process regarding the first complaint had been issued seventeen months earlier on February 1, 1993. The July 20, 1994 process had no legal effect because it was issued more than six months after the issuance of the previous process. Accordingly, the trial court should have dismissed the first complaint because it duplicated the second complaint and because the process associated with the first complaint was issued more than six months after the issuance of the previous process regarding the first complaint.

B.

THE STATUS OF THE CLAIMS AGAINST MR. SEIGHAM

\*8 Despite filing two complaints and making numerous attempts to serve process, Ms. Woods and her husband have never been able to serve a copy of a complaint on Mr. Seigham. The case had been pending for four years by the time the trial court dismissed both the first and the second complaint. Accordingly, the trial court properly dismissed all claims against Mr. Seigham for lack of service of process.

C.

THE PROPERTY DAMAGE CLAIMS AGAINST WORLD TRUCK TRANSFER

Both complaints filed by Ms. Woods and her husband sought damages for personal injuries and property damage. These claims have different limitations periods. The limitations period for personal injury claims is one year; while the period for property damage claims is three years. See Tenn.Code Ann. § § 28-3-104(a)(1) & -105(1) (Supp.1999). Thus, the property damage claims in both the complaint filed in February 1993 and the renewed complaint filed in January 1994 were timely in that they were filed within three years after the cause of action accrued.

Ms. Woods and her husband did not pursue the property damage claims in their renewed complaint after the trial court dismissed their personal injury claims in August 1994. That order of dismissal was not a final, appealable judgment because it did not resolve all their claims against World Truck Transfer. For reasons not apparent in the record, Ms. Woods and her husband did not pursue their property damage claims that had not been dismissed.

Finally, in January 1997, the trial court dismissed the property damage claims in their renewed complaint for lack of prosecution.

Trial courts must dispose of pending cases and avoid congestion of their dockets in order to be efficient. See *Chrisman v. Curle*, 18 Tenn. (10 Yer.) 488, 488 (1837). Accordingly, trial courts may manage their dockets to move cases along with reasonable dispatch and may, when necessary, dismiss a complaint involuntarily when the plaintiff has failed to prosecute the case. See Tenn. R. Civ. P. 41.02(1). Accordingly, trial courts may dismiss a complaint when a plaintiff fails to have process issued or served on a defendant over a long period of time, see *Ford v. Bartlett*, 62 Tenn. (3 Baxt.) 20, 21-22 (1873), or when a plaintiff fails to move a case toward adjudication when there is no compelling reason for delay. See *Timber Tracts, Inc. v. Fergus Elec. Coop., Inc.*, 753 P.2d 854, 856 (Mont.1988); *Penn Piping, Inc. v. Insurance Co. of N. Am.*, 603 A.2d 1006, 1009 (Pa.1992).

We understand that Ms. Woods and her husband were reluctant to pursue only their property damage claim. However, we find no reason in the record why they would have allowed the property damage claim in their renewed complaint to languish from August 1994 until January 1997. Their procedurally incorrect and futile efforts to reinvigorate their first complaint do not adequately account for this delay. After the trial court dismissed the first complaint in August 1996, the lawyer representing Ms. Woods and her husband failed to press forward on their property damage claim. Based upon the absence of a cogent explanation for the five year delay in prosecuting their property damage claim against World Truck Transfer, the trial court properly dismissed the claim for lack of prosecution.

IV.

\*9 We affirm the dismissal of the personal injury and property damage claims against Mr. Seigham and the property damage claims against World Truck Transfer. We also vacate the portion of the trial court's orders dismissing Ms. Woods's and her husband's claims against World Truck Transfer stemming from the personal injuries she sustained in the collision and remand the case for further proceedings consistent with this opinion. We tax the costs of this appeal to Mina Woods and Robert

Not Reported in S.W.3d  
(Cite as: 1999 WL 1086462, \*9 (Tenn. Ct. App.))

Page 8

Woods and their surety for which execution, if  
necessary, may issue.

TODD, P.J., M.S., and CANTRELL, J., concur.

END OF DOCUMENT

## **EXHIBIT 9**

Citation	Search Result	Rank 1 of 1	Database
Tenn. Op. Atty. Gen. No.			TN-AG
Tenn. Op. Atty. Gen. No. 98-177			
(Cite as: 1998 WL 661351 (Tenn.A.G.))			

Office of the Attorney General  
State of Tennessee

\*1 Opinion No. 98-177  
August 28, 1998

Tennessee Regulatory Authority Administration of a Universal Service Fund for  
Telephone Service

The Honorable H. Lynn Greer, Jr.  
Chairman

The Honorable Sara Kyle  
Director

The Honorable Melvin J. Malone  
Director  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243-0505

QUESTIONS

1. Tenn. Code Ann. § 65-5-207 authorizes the Tennessee Regulatory Authority (TRA) to create a Universal Service Fund in order to ensure that universal telephone service is provided to consumers at reasonable rates. If the TRA establishes a Universal Service Fund pursuant to Tenn. Code Ann. § 65-5-207, and funds from contributing utilities are deposited with the Treasurer of the State of Tennessee, may the interest be retained for the benefit of the Fund?
2. May the TRA delegate its authority under Tenn. Code Ann. § 65-5-207(c)(4) in whole or in part to a private firm or another governmental entity?

OPINIONS

1. No. If the TRA establishes a Universal Service Fund pursuant to Tenn. Code Ann. § 65-5-207, the funds from contributing utilities must be deposited with the Treasurer of the State of Tennessee, and the interest generated by those funds will become public money and revert to the general fund.
2. No. Neither Tenn. Code Ann. § 65-5-207 nor other statutes pertaining to the TRA vest in that agency the power to enter into the type of contracts and agreements that would be necessary for the TRA to delegate its authority to administer a Universal Service Fund.

ANALYSIS

Tenn. Op. Atty. Gen. No.

(Cite as: 1998 WL 661351, \*1 (Tenn.A.G.))

(1)

Tenn. Code Ann. § 65-5-207 requires that universal telephone service be maintained at affordable rates. In furtherance of this goal, the statute provides:

(c) The authority shall create an alternative universal service support mechanism that replaces current sources of universal service support only if it determines that the alternative will preserve universal service, protect consumer welfare, be fair to all telecommunications service providers, and prevent the unwarranted subsidization of any telecommunications service provider's rates by consumers or by another telecommunications service provider. To accomplish these objectives, the authority, if it creates or subsequently modifies an alternative universal service support mechanism, shall: ...

(3) Order only such contributions to the universal service support mechanism as are necessary to support universal service and fund administration of the mechanism;

(4) Administer the universal service support mechanism in a competitively neutral manner, and in accordance with established authority rules and federal statutes; ...

(d) The authority shall monitor the continued functioning of universal service mechanisms and shall conduct investigations, issue show cause orders, entertain petitions or complaints, or adopt rules in order to assure that the universal service mechanism is modified and enforced in accordance with the criteria set forth in this section.

\*2 Tenn. Code Ann. § 65-5-207.

Pursuant to Tennessee law, the money collected by the TRA for the benefit of the Universal Service Fund must be deposited with the State Treasurer. See Tenn. Code Ann. §§ 9-4-301 and -302. Interest generated by principal funds deposited with the State Treasurer becomes "public money" within the meaning of Article II, Section 24 of the Tennessee Constitution. Op. Tenn. Atty. Gen. No. 83-489 (November 10, 1983). That section of the Constitution states that "no public money shall be expended except pursuant to appropriations made by law." Tenn. Const. Art. II, Sec. 24. Consequently, the interest would have to be appropriated by the Legislature before it could be expended. The statute authorizing the creation and administration of the Universal Service Fund would have to require explicitly that interest earned on contributions to the Fund be retained exclusively by the Fund in order to divert the interest earned on those contributions from the State's general fund. Because it does not currently do so, the interest would go to the general fund.

(2)

The second question concerns whether or not the TRA may have a third party administer the Fund. As mentioned above, this Fund will be set up in an account with the State Treasurer's Office. Once the account is set up, that Office will as a matter of course render certain limited administrative services. Nevertheless, Tenn. Code Ann. § 65-5-207(c)(4) requires the TRA, if it establishes such a fund, generally to administer it "in a competitively neutral

Tenn. Op. Atty. Gen. No.

(Cite as: 1998 WL 661351, \*2 (Tenn.A.G.))

manner, and in accordance with established authority rules and federal statutes ...." In order for the TRA to delegate a portion of its administrative duties to a private firm or another governmental entity, it would have to have the power to enter into the contracts and agreements with such firms and agencies that would be necessary to accomplish the delegation. This Office is unaware of any statutory authority granting the TRA such powers with respect to the proposed Universal Service Fund.

Tenn. Code Ann. § 65-5-207(c)(4) contains no language indicating that the TRA may delegate its role in administering the proposed Fund. Tennessee law is well settled that statutory authority is required to enable a State agency to act. Op. Tenn. Atty. Gen. No. 91-66 (July 9, 1991). "Administrative agencies have only such power as is granted them by statute, and any action which is not authorized by the statutes is a nullity." General Portland, Inc. v. Chattanooga-Hamilton County Air Pollution Control Board, 560 S.W.2d 910, 913 (Tenn. App. 1976). The courts have applied this principle specifically to the former Public Service Commission, which previously had the authority to regulate telephone service that the TRA now exercises. In Tennessee-Carolina Transportation, Inc. v. Pentecost, 206 Tenn. 551, 556, 334 S.W.2d 950, 953 (1960), the Supreme Court declared, "The powers of the [Public Service] Commission must be found in the statutes. If they are not there, they are non-existent." The TRA, by virtue of Tenn. Code Ann. § 65-5-207(c)(4), has clear authority to administer a Universal Service Fund if it decides to create such a Fund in accordance with the other provisions of that section of the Code. But this Office is not aware of any statutory authority that would enable it to delegate its duty to administer the Fund. If anything, the implication of § 65-5-207(c)(4) is to the contrary. While many important powers have been vested by the General Assembly in the TRA, including those enumerated at Tenn. Code Ann. §§ 65-4-104 to -117, 65-4-201 to -204, 65-1-209, and other Code sections, no statute appears to give the TRA the ability to make contracts or agreements with a private firm or another governmental entity for that firm or entity to assume a role in administering the Universal Service Fund. Absent such statutory sanction, the TRA is unable to accomplish even a limited delegation.

**\*3** As a general principle, government agencies, if authorized by statute, may contract with third parties for assistance in performing their statutory duties, so long as ultimate control and all "purely legislative" powers are retained by the agency. State v. Edwards, 572 S.W.2d 917, 919 (Tenn. 1978); Op. Tenn. Atty. Gen. No. 85-285 (November 26, 1985); Op. Tenn. Atty. Gen. No. 85-286 (November 27, 1985); Op. Tenn. Atty. Gen. No. 94-68 (May 17, 1994). As this Office has recognized,

The legislature may employ private persons, associations, or private corporations in a public administrative capacity to carry the law into effect, or to determine facts on which the application or enforcement of the law is to depend, providing that the statute establishes an independent standard for the guidance of those who are to administer the law.

Op. Tenn. Atty. Gen. No. 94-10 (February 2, 1994). Any delegation of authority must be reasonable under the circumstances, and all fundamental questions of policy must have been decided by the legislature or the agency in which it has vested power. Op. Tenn. Atty. Gen. No. 94-10 (February 2, 1994). Proper controls



**(Cite as: 1998 WL 661351, \*3 (Tenn.A.G.))**

must always be retained to safeguard against arbitrary or self-motivated actions. But the ability to delegate at all is preconditioned on the agency's having the fundamental authority to deal and contract with the third party whose assistance it seeks. Here, this Office is aware of no authority that empowers the TRA to enter into the contracts and arrangements necessary for it to secure the assistance of other entities in administering the proposed Universal Service Fund. Neither Tenn. Code Ann. § 65-5-207(c)(4) nor the TRA's general statutes supply such authority.

Consequently, it is the opinion of this Office that the TRA will not be able to delegate to a private firm or another governmental entity a portion of its duties in administering the proposed Universal Service Fund, should the TRA decide to create such a Fund.

John Knox Walkup  
Attorney General and Reporter

Michael E. Moore  
Solicitor General

Charles L. Lewis  
Deputy Attorney General

Tenn. Op. Atty. Gen. No. 98-177, 1998 WL 661351 (Tenn.A.G.)  
END OF DOCUMENT