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Tennessee Claims Commission
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IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE EASTERN DIVISION

FILED
MAR 18 2009
Tennessee Claims Commission
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BELLSOUTH TELECOMMUNICATIONS, INC.,	)	
Plaintiff,	)	
v.	)	**No. 20071429**
	)	
STATE OF TENNESSEE	)	
Defendant.	)	

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AMENDED ORDER

This cause came to be heard on the regular ~~docket before the Claims~~ Commission for the State of Tennessee, Eastern Division, before the Honorable Commissioner William Shults, upon Bellsouth's claim for damages to its underground utility facilities, the State's answer, eyewitness testimony from the State and the testimony of claimant, exhibits from both parties, arguments of Counsel, and the entire record from all of which the Commissioner finds as follows:

1. That jurisdiction is appropriate pursuant to T.C.A. Section 9-8-307 Subsections I or M;

2. that the State of Tennessee and its Department of Transportation failed to comply with the requirements of Underground Utility Damage Prevention Act, T.C.A. 65-31-101 et. seq. in failing to request the location of buried utility facilities prior to commencing its excavations;

3. that the work performed by the State was not an emergency excusing its compliance with the Underground Utility Damage Prevention Act;

4. that it was foreseeable given the location of the sink hole that utility facilities could be buried in the State right of way;

5. that in assessing the damages claimed by Bellsouth, the Commissioner finds that the amount of actual damages are $7,241.69 and not the $9,636.47 claimed by BellSouth;

6. that the difference in the amount claimed versus the amount awarded is attributable to the overheads added to the contractor charges and loss of profit. Specifically, the Commissioner finds that the overhead charges associated with the contractor charges are not a reasonable expense associated with the repair of the damaged facilities and the fact that Bellsouth had a redundant systems in place precludes its claim for lost profits;

8. Accordingly, it is hereby **ORDERED, ADUDGED, AND DECREED** that the Claimant, BellSouth Telecommunications, Inc. recover a judgment against the State of Tennessee in the amount of $7,241.69.

IT IS SO ORDERED, ADJDUGED, AND DECREED.

ENTERED this the 16th day of March, 2009

William O. Shults Commissioner for the
Eastern Division

APPROVED FOR ENTRY:

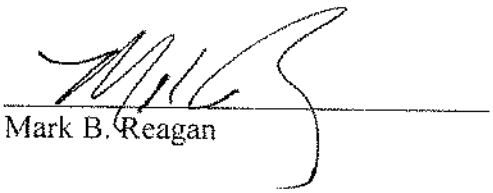
Mark B. Reagan
260 Cumberland Bend Drive
Nashville, Tennessee 37228

CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been served upon counsel of record by mailing a copy of same to:

James D. Foster, Assistant Attorney General
PO Box 20207
Nashville, TN 37202

This the 5TH day of March 2009.



Mark B. Reagan

CERTIFICATE

I certify that a true and exact copy of the foregoing Order has been mailed to:

Mark B Regan
260 Cumberland Bend Drive
Nashville, Tennessee 37228

James D. Foster, Esq.
Office of the Attorney General
P O Box 20207
Nashville, Tennessee 37202

This the 18th day of March, 2009.

Marsha Richeson

MARSHA RICHESON, Clerk
Tennessee Claims Commission