

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**November 21, 2007**

**IN RE:**

**TARIFF FILING BY UNITED TELEPHONE-SOUTHEAST,  
D/B/A EMBARQ, TO INCREASE RESIDENTIAL AND  
PRIVATE LINE RATES, INCREASE LATE PAYMENT  
CHARGES AND DECREASE THE NUMBER OF CALL  
ALLOWANCES FOR DIRECTORY ASSISTANCE FROM SIX  
(6) TO THREE (3) - Tariff Number 2006-0530**

**DOCKET NO.  
06-00288**

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**ORDER APPROVING TARIFF**

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This matter came before Director Eddie Roberson, Director Pat Miller, and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conferences held on December 4, 2006 and January 8, 2007 for consideration of the Tariff Filing to Increase Residential and Private Line Rates, Increase Late Payment Charges, And Decrease The Number Of Call Allowances For Directory Assistance From Six (6) to Three (3) – Tariff Number 2006-0530 ( the "Tariff") filed by United Telephone Southeast d/b/a Embarq ("Embarq").

**HISTORY OF DIRECTORY ASSISTANCE CHARGES IN TENNESSEE**

Prior to 1997, Directory Assistance ("DA") was free to all consumers in Tennessee. The majority of the Directors<sup>1</sup> initially approved directory assistance charges at the request of Embarq in 1997 in Docket No. 96-01423, based on the majority's decision that directory assistance is a non-

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<sup>1</sup> Director Kyle concluded that directory assistance service was appropriately classified as an essential basic service and did not vote with the majority.

basic service under state law.<sup>2</sup> Following a contested case proceeding, the Authority approved Embarq's tariff for a \$0.29 DA charge and required Embarq to amend its tariff to provide six (6) free DA inquiries per month rather than three (3) as proposed by Embarq, based upon the finding that many telephone numbers were not published in the printed telephone directory.<sup>3</sup>

The TRA's decision in Docket No. 96-01423 was appealed to the Tennessee Court of Appeals by the Consumer Advocate Division of the Office of the Attorney General for the State of Tennessee ("Consumer Advocate"). While Embarq agreed with the TRA's decision that DA is a non-basic service, Embarq pursued its own appeal, arguing before the Court that the TRA had exceeded its authority by requiring Embarq to amend its tariff. The Court issued its opinion on July 18, 2002, finding that the TRA had correctly determined that DA is a non-basic service and that Embarq could charge for DA. The court rejected Embarq's argument and held that the TRA acted within its statutory authority in requiring Embarq to file an amended tariff to provide for six (6) DA inquiries per month and free unlimited DA for disabled customers and residential subscribers age sixty-five (65) or older. The Court affirmed that the TRA had acted within its power to establish such requirements, citing Tenn. Code Ann. § 65-4-117(3), which states that the Authority has the power to:

After hearing, by order in writing, fix just and reasonable standards, classifications, regulations, practices and services to be furnished, imposed, observed and followed thereafter by any public utility.

In sum, the Court held that while DA is a non-basic service and Incumbent Local Exchange Carriers ("ILECs") can set rates accordingly, the TRA retains the power to establish the appropriate safeguards and requirements that it deems necessary.

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<sup>2</sup> Tenn. Code Ann. § 65-5-109(f), passed as a part of the Tennessee Telecommunications Act of 1995, prohibits a basic service from being increased during the initial four years after an incumbent local exchange company elects to fall under price regulation.

<sup>3</sup> See *United Telephone Southeast, Inc. Tariff No. 96-201 to Reflect Annual Price Cap Adjustment*, Docket No. 96-01423, *Order Approving in Part and Denying in Part Tariff 96-201* (September 4, 1997).

Effective May 30, 2003, Embarq increased its rate for DA from \$0.29 to \$0.50 in Tariff 2003-0380. The tariff went into effect without a request for a contested case proceeding or a request for intervention.

Since BellSouth Telecommunications, Inc. ("Bellsouth") began charging for DA, in 1999, it has increased the rate on four separate occasions. On September 15, 2003, BellSouth increased the DA rate from \$0.29 to \$0.40 per call (Tariff 2003-00902), and on September 10, 2004, BellSouth increased the rate to \$0.59 per call (Tariff 2004-01029). On October 1, 2005, Bellsouth increased its DA charge to the rate of \$0.98 (Tariff 2005-00818). These three DA tariffs went into effect without a request for a contested case proceeding or a request for intervention.

On December 1, 2004, BellSouth filed Tariff 2004-01434 which reduced the number of free monthly DA calls from six to three. The tariff also extended free Directory Assistance Call Completion ("DACC") to disabled customers, which allowed disabled customers to not only get free DA but also have the call completed automatically by the operator to the requested telephone number without charge.

The Consumer Advocate filed a Complaint and Petition to Intervene ("Complaint") in Tariff 2004-01434 on December 28, 2004 requesting that the TRA convene a contested case. The Consumer Advocate argued that BellSouth's proposal to decrease the number of call allowances was inconsistent with the TRA's previous decision which established six call allowances and was contrary to the interests of Tennessee consumers. The Consumer Advocate also argued that DACC should be extended to customers sixty-five (65) years or older in addition to BellSouth's proposal to extend free DACC to physically and visually disabled customers.

At the January 10, 2005 TRA Conference, the Authority voted to allow BellSouth's tariff to go into effect concluding that the Consumer Advocate had not requested a suspension of the tariff nor did a sufficient reason exist for suspending the tariff on its own motion under Tenn. Code Ann.

§ 65-5-101(c). On March 14, 2005, a majority declined to convene a contested case as requested by the Consumer Advocate and concluded that the tariff as a whole did not harm the public interest.<sup>4</sup>

Finally, at the September 25, 2006 TRA Conference, a majority of the voting panel (Directors Roberson, Miller and Jones) assigned to Docket 06-00232, *BellSouth Tariff (06-00431) To Increase Directory Assistance And Operator Service Rates*, approved an increase in DA rates from \$0.98 to the present rate of \$1.14 per call and a decrease of the number of free DA calls from three to one per month.<sup>5</sup>

#### **TARIFF 2006-0530**

On November 13, 2006, Embarq filed Tariff No. 2006-0530 to increase various rates. The rate for local residential service is being increased from \$16.95 to \$17.50 and there are numerous rate increases to dedicated private line services. The tariff also proposes to reduce the number of call allowances for Directory Assistance (“DA”) from six (6) to three (3). Finally, the tariff proposes to increase late payment charges for residential customers from 2% to the greater of 2% or \$5.00 and from 3% for business customers to the greater of 3% or \$10.00.

The tariff was scheduled to become effective December 15, 2006; Embarq notified its customers of these rate increases via newspapers of general circulation in its service area.

At the November 20, 2006 TRA Conference, the Directors approved Embarq’s 2006 price regulation plan in Docket No. 06-00207. As a result of that filing, Embarq’s calculations indicated revenue headroom<sup>6</sup> of approximately \$1.2 million for basic services and approximately \$1.65 million for non-basic services. Embarq’s filing proposes basic and non-basic rate increases, both of which are less than the Company’s existing headroom in each respective category; therefore, Embarq has sufficient headroom for the proposed increases.

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<sup>4</sup> Director Jones did not vote with the majority and filed a separate dissenting opinion in Docket No. 04-00416 on September 2, 2005.

<sup>5</sup> Director Jones voted to deny the tariff filing with respect to decreasing the DA call allowances from three to one.

<sup>6</sup> Revenue headroom refers to the difference in the current revenues compared to the maximum amount of revenues allowable under the price regulation plan, i.e., the amount by which rates/revenues can be increased.

Tenn. Code Ann. § 65-5-109(f) provides in part:

...in no event shall the rate for residential basic local exchange telephone service be increased in any one year by more than the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation.

The percentage change in inflation using the GDP-PI comparing the first quarter of 2006 with the first quarter of 2005 was 3.3%. Embark's proposed local rate increases for residential consumers range from 3.0% to 3.25%, which is less than the 3.3% inflationary cap. For example, local residential flat rates are increasing from \$16.95 to \$17.50, a 3.24% increase. The proposed local residential rate increases are therefore consistent with the above referenced statute.

Embark also has proposed to increase rates for various dedicated private line services. These services are all categorized as non-basic, and pursuant to Tenn. Code Ann. § 65-5-109(h), price regulated companies "may set rates for non-basic services as the company deems appropriate."

In compliance with TRA Rule 1220-4-1-.05 which requires all utilities applying for rate increases to provide public notice of every rate change via newspapers of general circulation in the utility's service area, Embark included in its filing a copy of the customer notification it published in newspapers in its service area.

Regarding the number of call allowances for DA, the Tariff proposes to reduce the number of call allowances for DA from six (6) to three (3). Beginning with the fourth DA request in any one month, residential and business consumers will be assessed a charge of \$0.50 per call. Physically and/or visually impaired persons and residential subscribers who are 65 years or older will continue receiving unlimited DA calls free of charge.

#### **DECEMBER 4, 2006 AUTHORITY CONFERENCE**

At a regularly scheduled Authority Conference held on December 4, 2006, a majority of the voting Panel assigned to this docket noted that the application of an increase in late fees of the greater of 2% or \$5.00 to Embark's approximately 5,000 Lifeline Assistance Program ("Lifeline")

subscribers does not ensure affordability of Universal Service and is not in the public interest.<sup>7</sup> Embarq representatives stated, among other things, that Lifeline customers are still being charged a just and reasonable rate for the services they receive, that Lifeline customers can mitigate late fees by paying their bills timely to avoid a late fee, and that Embarq is able to identify Lifeline customers but does not have the technical capability to exclude them from late payment application.

Thereafter, the majority of the Panel voted to approve the Tariff excepting the portion regarding residential late payment charges and made the following findings:

1. The proposed increases are less than Embarq's existing headroom and the proposed residential rate increase is less than the inflationary cap permitted by Tenn. Code Ann. § 65-5-109.
2. Dedicated private line services are non-basic services and rate increases may be set by Embarq pursuant to Tenn. Code Ann. § 65-5-109 (h).
3. Embarq has provided customer notification through publication in newspapers of general circulation as required by TRA Rules.<sup>8</sup>

#### **JANUARY 8, 2007 AUTHORITY CONFERENCE**

On December 12, 2006, Embarq filed an Amended Tariff to increase the residential late payment charge, but excluded Lifeline subscribers from such late payment charge. At a regularly scheduled Authority Conference held on January 8, 2006, the voting panel assigned to this docket considered the Amended Tariff filed by Embarq and found that while the Authority has the power to establish requirements and safeguards it deems appropriate under Tenn. Code Ann. § 65-4-117, the

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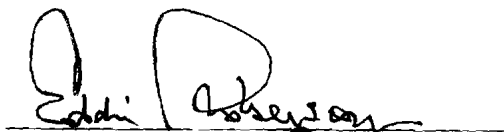
<sup>7</sup> Director Jones does not concur with this conclusion. However, he did express his concern that the Tariff may unjustly discriminate against Lifeline subscribers.

<sup>8</sup> Director Jones concurred with the decision to exclude the portion of the Tariff related to residential late payment charges and voted no as to the remainder of the motion. He stated that the portion of the Tariff relating to the reduction of DA exemptions should be denied, citing his concurrence and dissent filed in Docket No. 04-00416. He further stated that the public interest of Tennessee would be served by a thorough review of the Authority's DA policy and referenced Docket No. 06-00232, where he stated that "while alternatives to traditional directory assistance are increasing, the harsh reality remains that many subscribers are still dependent on traditional, familiar, and oftentimes life-enabling and enhancing offerings like directory assistance."

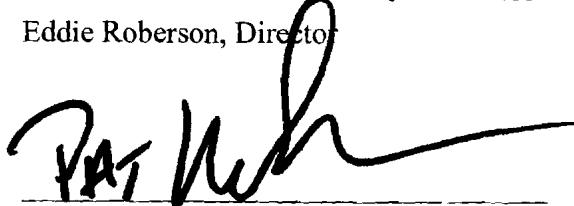
Amended Tariff does not violate the public interest or the policies of the TRA and voted unanimously to approve it.<sup>9</sup>

**IT IS THEREFORE ORDERED THAT:**

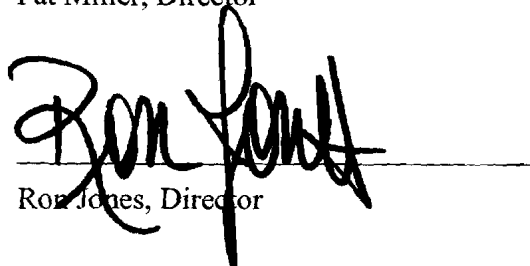
Tariff No. 2006-00530 filed by United Telephone Southeast d/b/a Embarq as amended on December 12, 2006 is approved.



Eddie Roberson, Director



Pat Miller, Director



Ron Jones, Director

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<sup>9</sup> Director Jones stated that his vote to approve the Amended Tariff should not be construed in future proceedings as blanket opposition to imposition of late fees for Lifeline subscribers or any other subscribers.