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VIA HAND DELIVERY

Hon. Eddie Roberson, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc. dba AT&T Tennessee Tariff to  
Increase Directory Assistance Rates (Tariff No. 2007-0283)*  
Docket No. 07-00188

Dear Chairman Roberson:

Enclosed are the original and four copies of *AT&T Tennessee's Response to  
Consumer Advocate's Complaint and Petition to Intervene*.

Copies of the enclosed are being provided to the Consumer Advocate.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line.

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc. dba AT&T Tennessee Tariff to Increase Directory Assistance Rates (Tariff No. 2007-0283)*

Docket No. 07-00188

**AT&T TENNESSEE'S RESPONSE**  
**TO CONSUMER ADVOCATE AND PROTECTION DIVISION**  
**COMPLAINT AND PETITION TO INTERVENE**

BellSouth Telecommunications, Inc. dba AT&T Tennessee ("AT&T") files this *Response to the Complaint and Petition to Intervene* filed by the Consumer Advocate and Protection Division ("CAPD") seeking a contested proceeding in opposition to AT&T's proposed tariff No. 2007-0283 ("the Tariff")<sup>1</sup>, and respectfully shows the Tennessee Regulatory Authority ("Authority" or "TRA") as follows:

**INTRODUCTION**

The CAPD's *Complaint* does ***not*** seek suspension of the Tariff. Nor does the CAPD take issue with AT&T's proposed rate increase. According to the CAPD, the sole purpose of the *Complaint* is to ask the TRA to convene a contested case to preserve "... at least one free directory assistance call per month for Tennessee

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<sup>1</sup> Notably, the CAPD's three-page *Complaint* does not seek suspension of the Tariff. If the *Complaint* had included a request to suspend the Tariff, such request would have been properly denied. The CAPD's *Complaint* did not allege with particularity how the complaining party (in this case, the CAPD) would be injured by the Tariff, did not allege that the Tariff violated a specific law, and did not demonstrate that the CAPD had a substantial likelihood of prevailing on the merits of its *Complaint*. Each of these separate requirements applies to a party seeking suspension of a tariff pending hearing as established in T.C.A. § 65-5-101(c)(3). While the CAPD's *Complaint* does not seek suspension of the Tariff, the TRA may still "choose to convene a contested case, or decline to convene a contested case, in its own discretion, to promote the public interest." T.C.A. § 65-5-101(c)(3)(c). As discussed below, however, the CAPD's *Complaint*, which is short on substance, offers no valid basis to conclude that the Tariff warrants further consideration by the TRA.

consumers.” *See Complaint*, at p. 3. It is not surprising that the CAPD has not challenged the proposed rate increase.<sup>2</sup> AT&T’s proposed rate increase complies fully with AT&T’s price regulation plan and the price regulation statute.

#### **I. The Law Governing AT&T’s Pricing**

Directory Assistance is a nonbasic service, and the TRA has long recognized that to be the case, pursuant to T.C.A. § 65-5-108(a).<sup>3</sup> While the CAPD attempted in 1997 to convince the Authority otherwise, the majority of the TRA voted to reject the CAPD’s arguments that Directory Assistance should be treated as a basic telecommunications service. This decision was upheld by the Tennessee Court of Appeals.<sup>4</sup> AT&T’s proposed tariff altering the charges imposed for this nonbasic service is consistent with the requirements in T.C.A. § 65-5-109 establishing price regulation.

The relevant law is absolutely clear: As a price regulated entity, AT&T is limited in its ability to change the price it charges for Directory Assistance only by its existing headroom. As demonstrated by AT&T’s price regulation filing in support of this Tariff, AT&T has existing headroom to cover the revenue changes associated with this tariff change, and the CAPD does not allege the contrary. In short, there is no legal issue regarding the rate increase.

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<sup>2</sup> AT&T’s Tariff would increase the rate for a Directory Assistance call from \$1.14 to \$1.35.

<sup>3</sup> *See Order Approving in Part and Denying in Part Tariff No. 96-201*, Docket No. 96-01423, at p. 17.

<sup>4</sup> *See Opinion, Consumer Advocate Division v. Tennessee Regulatory Authority*, No. M1997-00238-COA-R3-CV (Tenn. Ct. Appeals), July 18, 2002, p. 5 (noting that TRA’s statutory construction supporting its decision that directory assistance is non-basic “is the correct one”).

## II. Free Directory Assistance Calls

While AT&T formerly applied no charge to the first Directory Assistance call per billing period, AT&T's Tariff changes the rates and charges set forth in the Tariff at Section A3.13.2, to apply charges to all calls, with two major exceptions: all Directory Assistance calls made by (1) disabled persons and (2) all such calls made by persons 65 and older, as set forth in the Tariff. These calls are provided to those persons completely free of charge. While this change eliminates free directory assistance calls for non-disabled and younger-than-65 customers, the proposed tariff retains a substantial benefit to the disabled and elderly – ***unlimited free*** Directory Assistance calls. See Section A3.13.2 B and C. As explained below, this public benefit is not required. This broad free Directory Assistance call allowance for the disabled and elderly alone provides a public interest benefit sufficient to justify a TRA decision to not convene a contested case proceeding.

There is no Tennessee law, TRA Order or TRA Rule requiring free Directory Assistance calls. The CAPD's *Complaint* provides no legal support or citation suggesting that free Directory Assistance calls are required. The CAPD's *Complaint* relies solely on a 2002 Court of Appeals decision holding that the TRA had ***discretion*** to require a free call allowance in the context of that case.<sup>5</sup>

Absent from the CAPD's *Complaint* is any reference to the TRA's subsequent *Order Declining to Convene Contested Case as to BellSouth Tariff No. 2004-1433 and Denying CAPD Complaint and Petition to Intervene* (Docket No. 04-00146). In that docket, the TRA found that the *Complaint and Petition to*

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<sup>5</sup> *CAPD v. Tennessee Regulatory Authority*, 2002WL 1579700\*7 (Tenn. Ct. App. 2002).

Intervene filed by the CAPD challenging BellSouth's proposed changes (from six to three free calls per month) to its Directory Assistance tariff failed to meet the statutory requirements for convening a contested case as set forth in Tenn. Code Ann. § 65-5-101(c). AT&T's Directory Assistance call allowances have been changed – with TRA approval – twice since the Court of Appeals decision was issued.<sup>6</sup> Moreover, as a policy matter, the TRA must recognize that acceptance of the CAPD's position on free call allowances may do no more than incent AT&T to raise Directory Assistance rates again under its price regulation plan. In fact, when the TRA last considered reduction in Directory Assistance exemptions, these same issues were raised. The TRA rightly recognized the benefit of targeting the exemption to the customers who most need the service. In addition, the TRA must put the CAPD's purely policy-based argument in modern context. Today, many Internet and 800 services are available, which provide directory information at no charge.

### **CONCLUSION**

For the foregoing reasons, AT&T urges the Authority to deny the *Complaint and Petition to Intervene* filed by the CAPD in light of the CAPD's failure to raise any legal argument in support of its position and in light of the Tariff's public interest benefits to disabled and elderly Tennesseans. The TRA has been vested by the General Assembly with discretion to choose when to convene a contested

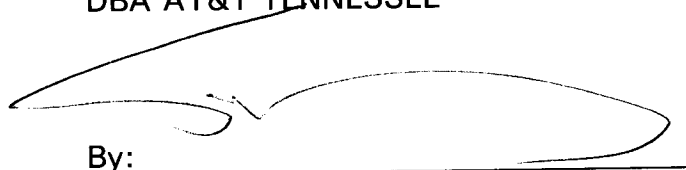
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<sup>6</sup> Most recently, on April 17, 2007, the Authority entered its *Order Granting BellSouth Tariff No. 2006-00431*, in Docket No. 06-00232. This Order approved a reduction in free monthly Directory Assistance calls from three to one.

case.<sup>7</sup> In this matter, a contested case will not serve the public interest because the CAPD has raised no legitimate basis on which this tariff, which complies fully with the price regulation statute and plan and which maintains free Directory Assistance calls for the disabled and elderly, should be the subject of a contested case proceeding.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.  
DBA AT&T TENNESSEE

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

By: \_\_\_\_\_

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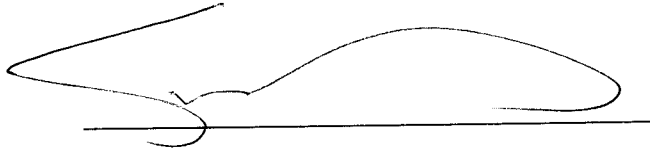
<sup>7</sup> T.C.A. § 65-5-101(c)(3)(c).

## CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2007, a copy of the foregoing document was served on the following, via the method indicated:

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

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