

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**December 18, 2007**

**IN RE:**

**TARIFF FILING BY AT&T TENNESSEE TO INCREASE  
RATES FOR DIRECTORY ASSISTANCE (DA) AND  
ELIMINATE THE MONTHLY DA CALL ALLOWANCE**

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**DOCKET NO.  
07-00188**

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**ORDER APPROVING TARIFF IN PART AND SUSPENDING TARIFF IN PART FOR  
NINETY (90) DAYS, CONVENING A CONTESTED CASE PROCEEDING AND  
APPOINTING A HEARING OFFICER**

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This matter came before Chairman Eddie Roberson, Director Sara Kyle 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 Conference held on August 20, 2007 for consideration of revisions filed on August 10, 2007 to AT&T Tennessee’s (“AT&T” or “Company”) Tariff 2007-0283 which would alter the tariff effective date and change the Directory Assistance (“DA”) rates.

**THE PLEADINGS**

The tariff revisions proposed by AT&T seek to increase the subscriber, or customer, charge for a DA call from \$1.14 to \$1.35 and eliminate the one free DA call available to customers who are not certified as exempt due to a visual or physical disability or who are sixty-five years of age or older.<sup>1</sup>

On August 14, 2007, the Consumer Advocate and Protection Division of the Office of the Attorney General of the State of Tennessee (“Consumer Advocate”) filed a *Complaint and*

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<sup>1</sup> Customers who are certified to be exempt receive unlimited directory assistance calls at no charge.

*Petition to Intervene* in this matter (“*Petition to Intervene*”). In its *Petition to Intervene*, the Consumer Advocate requests that the Authority convene a contested case proceeding to evaluate the propriety of eliminating free DA calls for non-exempt consumers. The Consumer Advocate asserts that “while the directory assistance service is classified as a non-basic service, the TRA has the jurisdiction and authority to impose free directory assistance allotments for the benefit of the public interest.”<sup>2</sup> Further, the elimination of the one remaining no-charge DA call per month is “contrary to the interests of Tennessee consumers.”<sup>3</sup> Through its *Petition to Intervene*, the Consumer Advocate seeks to preserve a minimum allotment of one free DA call for Tennessee consumers.<sup>4</sup>

On August 15, 2007, AT&T filed its *AT&T Tennessee’s Response to Consumer Advocate and Protection Division Complaint and Petition to Intervene* (“*Response*”). In its *Response*, AT&T argues that the Consumer Advocate’s *Petition to Intervene* does not seek suspension of the tariff nor is there a challenge to the legal propriety of the Company’s requested rate increase for DA calls.<sup>5</sup> Pursuant to Tenn. Code Ann. § 65-5-109, AT&T, as a price regulated entity, “is limited in its ability to change the price it charges for Directory Assistance only by its existing [revenue] headroom.”<sup>6</sup> The Company asserts that this requirement is satisfied and is demonstrated in its price regulation filing submitted in support of the tariff.

Additionally in its *Response*, the Company asserts that although it proposes elimination of free DA calls for non-disabled and younger-than-65 customers, and despite the fact that it is not required, its tariff retains the substantial public benefit of unlimited free DA for the disabled

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<sup>2</sup> *Petition to Intervene*, p. 2 (August 14, 2007), citing *Consumer Advocate v. Tennessee Regulatory Authority*, 2002 WL 1579700\*7 (Tenn. Ct. App. 2002).

<sup>3</sup> *Petition to Intervene*, p. 3 (August 14, 2007).

<sup>4</sup> *Id.*

<sup>5</sup> *Response*, pp. 1-2 (August 15, 2007).

<sup>6</sup> *Id.* at 2.

and elderly.<sup>7</sup> AT&T contends that the unlimited free DA call allowance to the disabled and elderly focuses on customers who most need the service and is sufficient to justify denying the Consumer Advocate's request for a contested case proceeding on this issue.<sup>8</sup> Finally, the Company cites as precedent for denying the Consumer Advocate's requests in the instant docket the Authority's Order in TRA Docket No. 04-00416.<sup>9</sup> There, the Authority declined to convene a contested case and denied the Consumer Advocate's petition to intervene which challenged BellSouth's proposed DA tariff that reduced the number of free DA calls from six to three. The Company also noted that the Authority granted its tariff reducing free monthly DA calls from three to one in Docket No. 06-00232.<sup>10</sup>

#### **FINDINGS AND CONCLUSIONS**

During the August 20, 2007 Authority Conference, the panel deliberated the procedural course of action that should be taken regarding the elimination of free DA calls to non-exempt consumers. After deliberation, the panel determined that a contested case proceeding is warranted and in the public interest. Further, a majority of the panel acknowledged that in accordance with the price regulation statute, Tenn. Code Ann. § 65-5-109, and as affirmed by the Tennessee Court of Appeals,<sup>11</sup> AT&T may adjust rates for non-basic service, such as DA, so long as the adjustment does not exceed lawfully imposed limitations, i.e., the regulated company demonstrates to the Authority that it has sufficient revenue headroom for the rate adjustment.

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<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 3-4.

<sup>9</sup> *See in re: BellSouth Tariff to Reduce the Number of Call Allowances for Directory Assistance and to Extend Exemptions to Directory Assistance Call Completion Service*, Docket No. 04-00416, *Order Declining to Convene Contested Case as to Bellsouth Tariff No. 2004-1433 and Denying Consumer Advocate's Complaint and Petition to Intervene* (September 2, 2005).

<sup>10</sup> *See in re: BellSouth Tariff (2006-00431) to Increase Directory Assistance and Operator Service Rates*, Docket No. 06-00232, *Order Granting BellSouth Tariff 2006-00431* (April 17, 2007).

<sup>11</sup> *Consumer Advocate Division v. Tennessee Regulatory Authority*, 2002 WL 1579700 (Tenn.Ct.App.) (July 18, 2002).

The majority found that AT&T has available revenue headroom that would allow for the DA rate adjustment.

Thereafter, a majority of the panel<sup>12</sup> voted to approve the rate increase, conditioned on the filing of an amended tariff, and to convene a contested case proceeding on the issue of whether the elimination of the monthly DA call allowance is in the public interest. Further, the panel granted the *Petition to Intervene* filed by the Consumer Advocate and appointed the Authority's General Counsel or his designee to act as the Hearing Officer in this proceeding to hear preliminary matters prior to the Hearing, to rule on any petition(s) for intervention, and to set a procedural schedule to completion. Finally, the panel suspended the portion of the tariff relating to the elimination of no-charge DA calls for ninety days, from August 20, 2007 through November 19, 2007.

**IT IS THEREFORE ORDERED THAT:**

1. The rate increase for directory assistance calls from \$1.14 to \$1.35 is approved, effective August 20, 2007, conditioned on the filing of an amended tariff by AT&T Tennessee that reflects this increased rate for directory assistance calls in excess of the allowance of one free monthly directory assistance call;<sup>13</sup>

2. A contested case proceeding on the issue of whether the elimination of free monthly directory assistance calls to non-exempt consumers is in the public interest is hereby convened;

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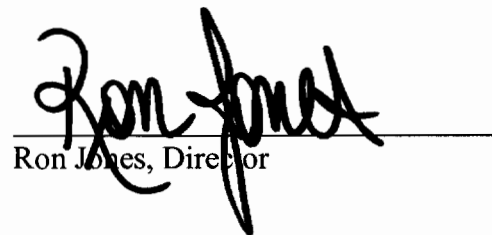
<sup>12</sup> Consistent with previous decisions, Director Kyle disagreed with the majority's decision to approve the DA rate increase. Rather, Director Kyle maintained that the tariff should be suspended in its entirety at this time. Director Kyle concurred with the remainder of the panel's decision.

<sup>13</sup> On August 21, 2007, AT&T Tennessee filed its amended tariff as ordered by the Authority on August 20, 2007.

3. The Consumer Advocate and Protection Division of the Office of the Attorney General of the State of Tennessee is granted leave to intervene and receive copies of any notices, orders or other documents in this matter;

4. The portion of the proposed revisions to Tariff 2007-0283 filed by AT&T Tennessee on August 10, 2007 relating to the request to eliminate the one free directory assistance call available to customers who are not otherwise exempted due to age or disability is suspended through November 19, 2007; and

5. The General Counsel or his designee is appointed Hearing Officer in this matter to hear preliminary matters prior to the Hearing, to rule on any petition(s) for intervention, and to set a procedural schedule to completion.

  
Eddie Roberson, Chairman  
Sara Kyle, Director  
Ron Jones, Director