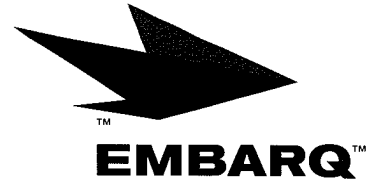


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Embarq  
Mailstop: NCWKFR0313  
14111 Capital Boulevard  
Wake Forest, NC 27587  
embarq.com

October 31, 2008

Chairman Tre Hargett  
Tennessee Regulatory Authority filed electronically in docket office on 10/31/08  
460 James Robertson Parkway  
Nashville, Tennessee 37243

Re: United Telephone-Southeast, Inc. d/b/a Embarq Tariff Filing to Increase Rates in  
Conjunction with the Approved 2007 Annual Price Cap Filing

Docket No. 07-00269

Dear Chairman Hargett:

Please find enclosed for filing in the above-referenced docket the original and four (4) copies of the Post-Hearing Brief of United Telephone Southeast LLC d/b/a Embarq ("Embarq"). Embarq has already filed the enclosed post-hearing brief electronically, however, this letter is the required follow-up to that filing.

An extra copy of this letter is enclosed. Please stamp the letter as "Filed" and return to me in the enclosed self-addressed stamped envelope. Finally, please do not hesitate to contact me if you have any questions.

Sincerely yours,

Edward Phillips

HEP:sm

Enclosures

cc: Consumer Advocate and Protection Division

Edward Phillips  
COUNSEL  
Voice: (919) 554-7870  
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edward.phillips@embarq.com

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re:

United Telephone-Southeast, Inc. d/b/a Embarq  
Tariff Filing to Increase Rates in Conjunction  
with the Approved 2007 Annual Price Cap Filing

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Docket No. 07-00269

**POST-HEARING BRIEF OF  
UNITED TELEPHONE SOUTHEAST LLC D/B/A EMBARQ**

United Telephone Southeast LLC d/b/a Embarq (“Embarq”) hereby timely submits its Post-Hearing Brief to the Authority. Embarq’s brief addresses the sole issue in this matter, which is whether Embarq is entitled to reduce its number of free directory assistance (“DA”) call allowances from three free calls per month to one per month. While a contested case should not have been convened, it is Embarq’s position that the Authority has established that Embarq has sufficient headroom to reduce the number of free DA call allowances as requested<sup>1</sup> and is bound by the precedent it established in Docket No. 06-00232 for BellSouth Telecommunications Inc. d/b/a AT&T Tennessee (“BellSouth” or “AT&T”). Specifically, that similarly situated parties like Embarq and AT&T must be treated in a consistent manner, which in turn requires that Embarq be allowed to reduce its free DA call allowances from three per month to one per month. The Authority must follow the reasoning it employed in Docket No. 06-00232 when it found AT&T’s DA tariff filing was in the public interest, because the Consumer Advocate has failed to

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<sup>1</sup> See the Authority’s December 7, 2007, *Order Approving Price Regulation Index Filing*, in Docket No. 07-00220, at p. 2, which the Authority found that Embarq “has headroom from which future rate increases may be made.”

provide any convincing evidence or legal theory in this case that removes Embarq from the policy the Authority established in that docket.

### **The History of DA Treatment by the Authority**

The Authority has not promulgated local directory assistance calling allowance rules applicable to all telecommunication service providers in Tennessee. Instead, incumbent local telecommunication service providers that are rate-of-return regulated have chosen to provide unlimited local directory assistance to their customers. At the same time, the Authority has permitted competitive local telecommunication service providers to charge their customers for each and every local directory assistance call with no free monthly DA call allowances or exemptions.

In the middle are the price regulated incumbent local telecommunication service providers, Embarq, AT&T and Citizens, with respect to which the Authority has made a series of decisions.<sup>2</sup> The Authority originally set United's and BellSouth's local directory assistance call allowances at six per month with unlimited public interest exemptions for the physically and visually disabled as well as customers age 65 and older (Docket Nos. 96-01423 & 99-00391).

The Authority's initial decision in Docket No. 96-01423 was appealed to the Tennessee Court of Appeals. In its order, the Court of Appeals affirmed the Authority's determination that local DA is a non-basic service. However, the Court also held that, under the circumstances in that case, the Authority had discretion pursuant to Tenn. Code Ann. § 65-4-117(3) to set a minimum number of free local DA calling allowances. Section 65-4-117(3) provides the Authority with discretion to "fix just and reasonable standards, classifications, regulations,

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<sup>2</sup> See Attachment 1, which is Exhibit MCH-1 from Mr. Hunter's pre-filed Direct Testimony, for a summary chart of the Authority's various local DA calling allowance dockets.

practices or services to be furnished, imposed, observed and followed thereafter by any public utility.”

Subsequently, in a series of two steps, the Authority approved AT&T reducing its local DA calling allowances from six to three (Docket No. 04-00416) and then three to one (Docket No. 06-00232). The latter AT&T tariff was approved by the Authority before United’s current tariff (Docket No. 06-00288), which provides for three free local DA calling allowances, could be approved by the Authority.

The Authority’s order in Docket No. 06-00232 included a discussion supporting its approval of AT&T’s tariff. The Authority’s reasoning is extremely broad. At pages 5-6 of the AT&T docket’s *Order Granting BellSouth Tariff No. 2006-0043*, the Authority’s discussion of local directory assistance calling allowances states in full:

“Initially, the TRA approved a six DA call allowance in 1997 due to the fact that many telephone numbers were not published in the printed directory. Some numbers had been excluded in the printed directory at a subscriber’s request (i.e., a non-published listing), and some were inaccurate or did not appear because new numbers were obtained after the directory was printed (e.g., a new customer or customer move). Accordingly, it was necessary that customers call DA in order to obtain telephone numbers for those subscribers whose numbers did not appear in the printed directory but were still available via directory assistance.”

“While some telephone numbers are not available in the printed directory today, the evolving dynamics of the communications environment enables many, if not most, consumers to obtain subscribers’ telephone numbers, not available in the printed directory, by alternative modes. For example, many telephone numbers are available through various internet search engines. Additionally, ever expanding bases of consumers have cellular telephones and electronic mail addresses (e-mail) by which they can be contacted in the event of a change to their landline telephone number. These expanding avenues of communication facilitate the acquisition of landline telephone numbers, and reduce dependency on DA for the procurement of telephone numbers that are not in the printed directory.”

“Further, the majority of BellSouth’s competitors have no restrictions on the DA services they offer, including the number of call allowances. In fact, most competing local exchange company’s (“CLECs”) do not have call allowances and charge for every DA request. BellSouth’s consumers are permitted one free DA call per month. Given the variety of existing methods from which to acquire telephone numbers in today’s environment, the Authority finds the tariff reasonable and not adverse to the public

interest. BellSouth will continue to provide its DA service at no charge to physically and visually disabled customers, and to customers sixty-five years or older who request an exemption.”

The Authority approved AT&T’s tariff Docket No. 06-00232 without a contested case. Moreover, the Consumer Advocate made no appearance in the AT&T docket.

The Authority considered Embarq’s Tariff No. 2007-456 at a regularly scheduled Authority Conference on December 17, 2007. The local directory assistance portion of the tariff was suspended by the Authority voting panel assigned to the docket. The Authority’s March 5, 2008 Order documenting the conference explained the “panel found that the public interest required that the Authority research and review the impact on Tennessee consumers” prior to making a decision. The panel further voted to convene a contested case, grant the Consumer Advocate’s petition to intervene and appointed a hearing officer to prepare the matter for hearing. At the Authority’s March 24, 2008 Directors’ Conference, the Authority voted to lift the suspension of Embarq’s local directory assistance rate increase but maintained the suspension of Embarq’s local directory assistance calling allowance tariff. The Authority’s May 12, 2008 Order stated that the voting panel thought it was “appropriate for the Authority to step back and review” how the local directory assistance calling allowance reductions will impact the public.

Both Embarq and the Consumer Advocate pre-filed direct testimonies on July 1, 2008 and rebuttal testimonies on August 1, 2008. A contested case hearing was conducted before the Authority on October 6, 2008.

## **ARGUMENT**

### **I. The Authority is Bound by Its Prior Decision in Docket No. 06-00232 and Must Grant Embarq's Tariff Reducing Embarq's DA Call Allowances From Three Free Allowances Per Month to One Free Allowance Per Month.**

Authority precedent controls the outcome of the agency's decision in this matter and, as a result, Embarq must be permitted to reduce its DA allowances from three free allowances per month to one per month. This action is consistent with the Authority's decision in Docket No. 06-00232, in which the Authority considered and approved the same exact reduction in the number of free DA call allowances for AT&T. The Authority's Order of April 17, 2007 in Docket No. 06-00232 not only set the DA policy for the State of Tennessee but also serves as precedent for the Authority. As a result, Embarq's tariff must be approved, to do otherwise is to subject Embarq to unequal and capricious treatment. Further, Embarq has made a prima facie showing that it and AT&T are similarly situated entities. The test for entities that are similarly situated does not consider the scale and scope of operations or any efficiencies of the entities. Rather, it considers the legal commonalities between the two. Specifically, that AT&T and Embarq are both price-regulated ILECs operating in Tennessee, providing DA services and that AT&T only provides one free DA call allowance. As a result, of this showing of similarity, and the fundamental notions of fairness, Embarq and AT&T cannot be treated differently.

### **A. Settled Principles of Administrative Law Require Similar Situations be Treated in a Similar Manner.**

The requirement that Embarq and AT&T be treated in the same manner is a fundamental tenet of administrative law. An agency cannot treat similarly situated entities differently without a reasoned explanation – an explanation that goes beyond a simple recital of perceived factual differences without analysis. This requirement comes not only from the Constitutional guaranty

of equal protection of the law,<sup>3</sup> but also from the fundamental requirement of rationality in administrative actions.<sup>4</sup> Further, an administrative agency cannot act in a manner that is inconsistent with its own precedents. These principles were explicitly stated by the D.C. Circuit in *Garrett v. FCC*:

“Hitherto, we have had occasion to deal with claims of disparate decisional treatment accorded parties by administrative bodies. Speaking of one agency, we have twice said that it “cannot act arbitrarily nor can it treat similar situations in dissimilar ways,” and we remanded litigation to the agency when it did not take pains to reconcile an apparent difference in the treatment accorded litigants circumstanced alike. We have pursued the same course with respect to the agency now before us where “the differences [were] not so ‘obvious’ as to remove the need for explanation.” These rulings vividly reflect the underlying principle, that agency action cannot stand when it is “so inconsistent with its precedents as to constitute arbitrary treatment amounting to an abuse of discretion.”<sup>5</sup> (Emphasis added to original).

The law requires that there be uniformity and consistency in the regulation of businesses entrusted to the Authority’s jurisdiction and oversight and that an agency such as the Authority not ignore their own prior decisions. Because of the Authority’s approval of the DA allowance issue in Docket No. 06-00232, Embarq relied on consistency of administrative decision-making as to what had already been approved for AT&T. Thus, Embarq maintains that the Authority should have followed its earlier precedent in Docket No. 06-00232 and approved Tariff No. 2007-456. This action would have been in accord with the doctrine of parity and equal treatment

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<sup>3</sup> See *City of Clebume v. Clebume Living Center*, 473 US. 432, 446-47 (1985); *Yick Wo v. Hopkins*, 11 8 US. 356, 367-68 (1886).

<sup>4</sup> See also Tenn. Code Ann. § 4-5-322, under which an administrative agency decision may be reversed, if the decision, among other things, violates a constitutional provision, is made upon unlawful procedure, is arbitrary or capricious, or is an abuse of discretion. It is Embarq’s position that a decision by the Authority that is inconsistent with the precedent established in Docket No. 06-00232 violates constitutional provisions, is made upon unlawful procedure, is arbitrary and capricious and is a clear abuse of discretion.

<sup>5</sup> *Garrett v. FCC*, 5 13 F.2d 1056, 1060 (D.C. Cir. 1975). See also, *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732 (D.C. Cir. 1965) (“[T]he Commission’s refusal to at least explain its different treatment of appellant and NJ3C was error.”); *Public Media Center v. FCC*, 587 F.2d 1322, 133 1 (D.C. Cir. 1978), “We cannot affirm a Commission order that does not clearly and explicitly articulate the standards which govern the behavior both of licensees that have violated the fairness doctrine and those that have not.”

recognized by the Court in *Garrett v. FCC* and the Tennessee Court of Appeals in *Rivergate Wine Liquors, Inc. v. City of Goodlettsville*.<sup>6</sup>

Based on the Authority's treatment of AT&T in Docket No. 06-00232, Embarq's Tariff No. 2007-456 – which in every aspect mirrors AT&T's current DA allowances – should have been approved. The Consumer Advocate has proffered no persuasive arguments or evidence that support its position and would require the Authority to reverse course and treat Embarq's tariff differently than a previously approved and virtually identical tariff.

Consistency in regulation of businesses entrusted to the jurisdiction and oversight of the Authority is essential to provide clear guidance to regulated entities. Embarq filed Tariff No. 2007-456 in reasonable reliance of the Authority's rulings regarding BellSouth's DA tariff in Docket No. 06-00232. The one DA allowance sought by Embarq is consistent with the policy standard already established by the Authority for DA allowances in Tennessee. As a result, binding precedent established in Docket No. 06-00232 compels consistent treatment between Embarq and AT&T.

Further, at the January 3, 2008 status conference in this matter, the Consumer Advocate made its position clear that it wanted the DA allowance portion of Embarq's tariff suspended. The Consumer Advocate sought to preserve “. . . the status quo for all companies required to provide free directory assistance allotments until the Authority can complete a thorough review of directory assistance policy . . .”<sup>7</sup> even though a different standard has already been established for AT&T. Unfortunately, if the relief requested by the Consumer Advocate in this matter is

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<sup>6</sup> Although the Tennessee Court of Appeals ultimately upheld a Goodlettsville ordinance prohibiting the sale of chilled wines in *Rivergate Wine Liquors, Inc. v. City of Goodlettsville*, 674 S.W. 2d 631, 636 (Tenn. Ct. App. 1983), the Court did state that the “nature of discrimination is unequal treatment among like kinds.” The ordinance was upheld because it did “not purport to treat similar businesses differently.” *Id.* At 636. Unfortunately, the Authority has subjected Embarq to unequal treatment because it established policy in Docket No. 06-00232 and then failed to apply that policy determination to Embarq in a consistent manner.

<sup>7</sup> See the Consumer Advocate's December 11, 2007 Complaint and Petition to Intervene at Para. 8, p. 3.



granted, a discriminatory standard will be set for Embarq. Therefore, it is the Consumer Advocate who is attempting to change the status quo – and the policy of the Authority – by seeking unequal treatment of Embarq’s tariff relative to another previously approved tariff. Embarq is decidedly harmed if it receives treatment that is different to that given to a similarly situated ILEC, namely AT&T.<sup>8</sup>

## **II. The Consumer Advocate has Failed to Demonstrate that the Authority Should not Approve Embarq’s DA Call Allowance Reduction.**

In its Complaint and Petition to Intervene, the Consumer Advocate asserted that the reduction in DA call allowances sought by Embarq was “not in the public interest of the consumers of Tennessee.”<sup>9</sup> As a result of taking this position, the Consumer Advocate asserted the affirmative of the issue and thereby assumed the burden of proof. As a result, the Consumer Advocate is required to produce evidence to persuade the trier of fact, in this instance the Authority, that Embarq is not entitled to the relief it seeks.<sup>10</sup> The Consumer Advocate failed to carry this burden and as a result, Embarq’s requested relief must be granted. Further, Embarq has provided substantial and material evidence in its pre-filed testimony and exhibits as well as live testimony at the hearing on October 6, 2008 that demonstrate, in a clear and convincing manner that, Embarq should be granted the same relief that the Authority granted to AT&T in Docket No. 06-00232.

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<sup>8</sup> The Authority is compelled to treat similar situations in similar ways. While the Authority can change its policy, it cannot do so arbitrarily. *See Herbert Harvey, Inc. v. NLRB*, 424 F.2d 770, 780 in which the D.C. Cir. Court of Appeals stated “. . . to be sure, the Board has broad discretion to determine when a jurisdictional exercise will serve the objectives of the Act, its power is not unlimited, and is never to be used dogmatically. As we recently noted in another instance where the board’s action departed substantially from that taken in seemingly like cases, “the Board cannot act arbitrarily nor can it treat similar situations in dissimilar ways.” (Footnote citations omitted).

<sup>9</sup> *See Complaint and Petition to Intervene* at p. 2.

<sup>10</sup> *See* the Hearing Officer’s Initial Order entered on February 14, 2008 at pp. 5-8. *See also*, Tenn. Code Ann. § 65-2-109(5) and Authority Rule 1220-1-2-.16(2).

Moreover, Embarq's witness Mr. Mark C. Hunter specifically demonstrated that: (1) reliable and readily available alternatives to traditional ILEC DA services exist in the form of free internet and telephone based resources; (2) the number of DA calls by Embarq's customers has dramatically decreased from 2001-2008; (3) consumers do not base their choice of telecommunications services provider on which company offers free DA call allowances; (4) Embarq is disadvantaged and unduly prejudiced compared to other providers that are regulated but are not required to provide free DA call allowances; (5) even though this is not a rate of return case, the evidence does demonstrate that Embarq is losing money providing the three free call allowances and that such loss can be mitigated if Embarq were allowed to reduce its free DA call allowances; (6) the Connected Tennessee survey assessing broadband penetration in Tennessee does not support a determination by the Authority that Embarq should not be permitted to reduce its free DA call allowances to one per month; and (7) Embarq is taking action in Virginia, along with other carriers to eliminate free DA call allowances in that jurisdiction.<sup>11</sup>

**A. Availability of DA Alternatives and the Connected Tennessee Survey.**

In having the burden of proof, the Consumer Advocate must demonstrate by a preponderance of the evidence that the DA alternatives available to Embarq's Tennessee consumers are not reliable. The Consumer Advocate failed to make this showing. Instead, the Consumer Advocate readily admitted in the pre-filed direct testimony of Michael D. Chrysler that "the internet is a viable alternative to finding residential and business listings."<sup>12</sup> Mr. Chrysler attempted to downplay this admission by testifying that not all Tennesseans have

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<sup>11</sup> See Hunter Rebuttal at p. 2, lines 18 - 20 and p. 3 at lines 7 - 8. See also Hunter Rebuttal at p. 4, lines 19 - 21.

<sup>12</sup> See Chrysler Direct at A-9, p. 3, lines 9-11.

internet access. However, the Connected Tennessee survey demonstrates that 72% of Tennesseans access the internet either at home, at work or from some other location in Embarq's service territory.

Further, Mr. Hunter's Rebuttal Testimony in Exhibit MCH-5 provides a summary of the seven counties that Embarq serves in its East Tennessee territory.<sup>13</sup> Both the Connected Tennessee survey and Exhibit MCH-5 demonstrate that Embarq's urban counties are at the statewide averages (75% internet availability) while Embarq's more rural counties do not meet the statewide average. Further, there is also commonality between Embarq's rural counties compared to rural counties in AT&T's territory. However, the Consumer Advocate fails to disclose to the Authority that the pattern exhibited in Embarq's Tennessee service territory, whether urban or rural, is very similar to the pattern existing in all areas of the state — including areas served by AT&T.

Even though the Connected Tennessee survey was not available to the Authority when it rendered its decision in Docket No. 06-00232, the survey supports the Authority's conclusions reached therein. Especially, when one considers that in more urban areas of Embarq service territory that 75% of those surveyed access the internet from some location, including their households. Thus, it is abundantly clear that internet based DA alternatives are readily available to the vast majority of Tennessee consumers and as the Consumer Advocate's witness conceded, a "viable alternative" to traditional DA services. In addition, while consumers located in more rural areas lag behind consumers in urban areas for percentage of internet access, it is telling that

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<sup>13</sup> The seven counties that Embarq serves are Sullivan, Washington, Carter, Greene, Unicoi in full and Hawkins and Johnson in part.

a number of these consumers have stated they do not need a computer or do not need internet access.<sup>14</sup>

In addition to the “viable alternative” of the internet for finding residential and business listings,<sup>15</sup> Embarq has provided substantial evidence demonstrating that telephone-based DA alternatives are also available. These alternatives are free of charge to consumers and provide access to both business and residential listings. One of the alternative directory sources is 1-800-935-5697, which is the 1-800-YellowPages number supported by AT&T. Even if consumers do not have access to the internet, they certainly have access to a telephone line and can easily access 1-800-YellowPages to find business and residential listings. Also, Mr. Hunter’s testimony provides examples of three other free telephone-based DA alternatives available to consumers in Tennessee. These alternatives are discussed in more detail at pages 11 - 12 of Mr. Hunter’s Direct Testimony. While the Connected Tennessee survey demonstrates that there are issues concerning some consumers’ ability to access the internet, the free DA telephone-based alternatives clearly fill any gap and are a valuable resource to consumers who do not have internet access.

Exhibit MCH-4 demonstrates that there has been a large scale, across the board decline in Embarq’s demand for local directory assistance services. This evidence suggests that there has been a fundamental shift in the way people obtain local directory assistance services.<sup>16</sup> Thus, given the evidence concerning DA alternatives, internet usage in Tennessee and the dramatic decline in DA usage by Embarq’s consumers, there is substantial material support existing in the

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<sup>14</sup> See Hearing Transcript at p. 68, lines 17 - 22, p. 69, lines 1 - 4. See also, for example, Hearing Exhibit 2 Johnson County Assessment, at Slides 4 and 5.

<sup>15</sup> See Chrysler Direct at p. 3, lines 9 - 11 at A-9.

<sup>16</sup> See Hunter Direct at p. 13, lines 3 - 12 and corrected Exhibit MCH-4 attached to Hunter Rebuttal filed on August 1, 2008 herein.

record that compels the Authority to grant Embarq's request of relief and reduce the number of free DA call allowances from three per month to one per month. This again, fits within the rationale expressed by the Authority in Docket No. 06-00232. Specifically, the Authority found in its April 17, 2007 Order that:

“many telephone numbers are available through various internet search engines. Additionally, ever expanding basis of consumers have cellular telephones and electronic mail addresses (e-mail) by which they can be contacted in the event of a change of their landline telephone number. These expanding avenues of communications facilitate the acquisition of landline telephone numbers, and reduce dependency on DA for the procurement of telephone numbers that are not in the printed directory.”<sup>17</sup>

The Consumer Advocate asserts that the counties in Embarq's traditional service area lag behind statewide averages. But the Authority should note the Connected Tennessee survey methodology and its other results. As far as methodology, the September 2007 Connected Tennessee survey contains a margin of error of plus or minus 9.8% when viewing county level data. Second, the county level figures are all from the September 2007 survey. While the January 2008 survey does not provide county level detail, the January 2008 Connected Tennessee survey shows significant increases in internet adoption, including significant relative gains in rural internet adoption.

Other results of the Connected Tennessee survey included in Mr. Chrysler's testimony at Exhibit MDC-1, but not mentioned by the Consumer Advocate in written or oral testimony are also important. For example, Slide 48 of the Connected Tennessee September 2007 survey shows that internet access costs are lower in all of Embarq's counties versus the statewide average. Slide 115 demonstrates household income is above the statewide average in all of Embarq's counties with the exceptions of Johnson and Carter Counties. Also, Slide 61 of the

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<sup>17</sup> See Order Granting BellSouth Tariff No. 2006-00431, at p. 5.

September 2007 survey shows that internet availability is greater in all of Embarq's counties versus the statewide average. That same slide also shows that each of Embarq's counties has an above average number of residents over 65 years of age, with Unicoi being significantly above the statewide average. Slides 49 - 68 demonstrate how residents over 65 years tend to significantly lack computer ownership, internet access and broadband adoption. However, this disparity is offset by the local DA exemption Embarq provides to its customers 65 years or older.

**B. Consumer Choice and Free DA Call Allowances.**

The Consumer Advocate claims in the testimony of Mr. Terry Buckner that consumers will be harmed or disadvantaged in some way if Embarq is permitted to reduce its DA call allowances.<sup>18</sup> However, it is evident from real world experience in Embarq's service territory, that consumers migrate to competitive providers even when those competitors do not provide free DA call allowances or even the same type of DA exemptions as does Embarq.

In his Direct Testimony, Mr. Hunter states that Charter Communications and Bristol Tennessee Essential Services ("BTES") have tariffs on file with the Authority that demonstrate that these companies do not provide customers with free DA call allowances. In addition, these competitors also offer a greatly reduced number of public interest exemptions compared to Embarq. The relevant sections of both company's tariffs are produced at Exhibit MCH-2. Further in his Rebuttal Testimony, Mr. Hunter discusses the fact that in an article in *Telephony Online* from April 14, 2008 a BTES spokesman said:

"we are hooking up people as fast as we want to, based upon the fact that we want to serve every customer really well. If we did some advertising, we could bring in a lot more customers in a hurry."

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<sup>18</sup> See Buckner Direct at p. 7, lines 4 - 16.

BTES has a 25% penetration rate in Embarq service territory in Bristol, Tennessee. In some areas where BTES has had its facilities for a longer period of time, BTES' penetration rate is at 50%. In addition, it is apparent that consumers having free DA alternatives and flocking to competitors like BTES without DA call allowances, the value of free DA call allowances are irrelevant.<sup>19</sup>

Not only do the real world examples of Charter Communications and BTES underscore that consumers are not making purchasing decisions based on whether such consumer receives free DA call allowances from a carrier, it also illustrates that these same carriers are not required to provide any free DA call allowances. Thus, a question of regulatory parity is raised in Embarq's relation to both BTES as a municipal local exchange carrier ("MLEC") and Charter Communications as a competitive local exchange carrier ("CLEC"). Further, a number of consumers have switched to wireless providers and have dropped local landline service offered by ILECs such as Embarq. The evidentiary record shows that these wireless carriers do not provide any free DA call allowances or exemptions.<sup>20</sup> Again, there is a lack of parity by requiring Embarq to provide three free DA call allowances.

To single out Embarq for different treatment as the Consumer Advocate requests in comparison to AT&T, MLECs, CLECs and wireless carriers, the Authority will abuse its discretion under Tenn. Code Ann. § 64-4-117(3). This is the "anti-competitive" problem of which Mr. Hunter spoke in his Direct Testimony,<sup>21</sup> and the type of problem that equates to disadvantage and undue prejudice.

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<sup>19</sup> See Hunter Rebuttal at p. 9, lines 4 - 17.

<sup>20</sup> See Hunter Direct at p. 8, lines 19 - 22, p. 9, line 1 and Exhibit MCH-3.

<sup>21</sup> See Hunter Direct at pp. 9 - 10.

**C. Disadvantage and Undue Prejudice Under Tenn. Code Ann. § 65-4-123.**

All Embarq seeks in its tariff filing is that it be permitted to reduce its free DA call allowances to one per month. At least if this relief is afforded it will bring Embarq into full parity with AT&T and in closer parity with BTES, Charter Communications and other CLECs. Further, granting such relief also comports with the state telecommunications policy as set forth under Tenn. Code Ann. § 65-4-123, which is to ensure that the Authority promote competition in all telecommunications markets and protect the interest of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider. Unless Embarq is granted the same relief that has been granted to AT&T it will be subject to unreasonable prejudice and disadvantage compared to its competitors.

Moreover, by ensuring that Embarq is not subject to unreasonable prejudice and disadvantage, the Authority will not abuse its discretion under Tenn. Code Ann. § 65-4-117(3). That is, even though the Authority can set just and reasonable standards for public utilities to follow, that discretion is limited by the Authority's action in other dockets. Specifically, since the Authority has granted AT&T a reduction of its free DA call allowances from three per month to one per month, it must do so for Embarq. Otherwise, the Authority will abuse its discretion in setting unfair standards for similarly situated ILECs operating in the state.

**D. Embarq's Financial Loss in Providing Free DA Call Allowances.**

Embarq has demonstrated through the evidence presented in Exhibit MCH-7,<sup>22</sup> that Embarq is experiencing a financial loss because the number of free DA call allowances that are processed far exceed the number of DA inquiries that can actually be billed. The numbers contained in Exhibit MCH-7 are confidential, and are not referenced herein. However, Exhibit

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<sup>22</sup> Exhibit MCH-7 is attached to Mr. Hunter's pre-filed rebuttal testimony.



MCH-7 demonstrates that there is a cost associated with each DA inquiry, and even though Embarq does bill .95¢ for the fourth DA call allowance, the revenues generated from the billing of these inquiries do not cover the overall cost. The bottom line is that Embarq incurs the same costs for all DA calls it provides, with those being provided for free generating no revenue that will offset any of the costs incurred. Moreover, the Consumer Advocate naively suggests that Embarq can simply reduce the price of its DA calls in order to meet competition from companies such as BTES and Charter Communications.<sup>23</sup> Actually, lowering the price for DA will in fact increase Embarq's financial loss.

In addition, the Consumer Advocate also fails to apprehend that Embarq is a price regulated company pursuant to Tenn. Code Ann. § 65-5-109. Specifically, the Consumer Advocate fails to consider that Embarq's price regulation plan constrains the pricing of non-basic services. Thus, Embarq cannot simply raise its DA rates to cover the losses to provide free DA call allowances at the drop of a hat. Rather, under Tenn. Code Ann. § 65-5-109 Embarq has to have sufficient headroom to support any pricing increase for non-basic services such as DA.

#### **E. Embarq's Action in Other Jurisdictions.**

The Consumer Advocate makes much ado about the level of DA call allowance in Embarq's other jurisdictions. However, out of eighteen jurisdictions in which Embarq operates half of those jurisdictions do not require Embarq to provide any free DA call allowances.<sup>24</sup> Nevertheless, the Consumer Advocate's witness Terry Buckner attempts to focus the Authority's attention on Embarq's requirements in the Commonwealth of Virginia. Specifically, witness Buckner stated at the hearing on October 6, 2008 that it is patently unfair in the City of Bristol,

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<sup>23</sup> See Buckner Direct at p. 9, lines 6 - 8.

<sup>24</sup> See Hunter Rebuttal at p. 8, lines 4 - 7.

Tennessee that is divided by the state line, for Embarq to provide three DA call allowances on the Virginia side of Bristol, while on the Tennessee side if Embarq's relief is granted, it would only provide one DA call allowance to Tennessee consumers.<sup>25</sup> Further, the Consumer Advocate fails to acknowledge that the Authority has no jurisdiction over the well-being of consumers in Virginia any more than the Virginia State Corporation Commission has jurisdiction over consumers living in Bristol, Tennessee.<sup>26</sup>

Under questioning from Director Roberson, witness Buckner admitted that Tennessee citizens in Hawkins County which is served by both AT&T and Embarq are already in a situation in which Hawkins County residents are treated in a dissimilar way. That is, in Hawkins County, Tennessee, AT&T's consumers only receive one DA call allowance per month, while Embarq's consumers in the same county, currently receive three DA call allowances per month. If the Authority grants the requested relief to Embarq, then these citizens in Hawkins County are at parity with AT&T. Even so, CLECs and other competitors are not required to provide any free calls.

The Consumer Advocate pays little attention to the fact that the Virginia Telecommunications Industry Association ("VTIA") has a matter currently pending before the Virginia State Corporation Commission in which it seeks the elimination of all free DA call allowances for all providers in Virginia.<sup>27</sup> Also, as Mr. Hunter testified, the Virginia State Corporation Commission also requires parity between incumbent local exchange carriers, municipal local exchange carriers and competitive local exchange carriers because it requires all

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<sup>25</sup> See Hearing Transcript at p. 77, lines 14 - 19.

<sup>26</sup> See Hearing Transcript at p. 83, lines 20 - 25 and p. 84, lines 1 - 21.

<sup>27</sup> See Case No. PUC-2008-00046. The link to the VTIA's Application is as follows: [http://docket.scc.state.va.us/CyberDocs/Libraries/Default\\_Library/Common/frameviewdsp.asp?doc=80514&lib=CA SEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native](http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=80514&lib=CA SEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native).

such carriers to provide three free DA call allowances.<sup>28</sup> Importantly, on October 24, 2008, the Staff of the Virginia State Corporation Commission filed its recommendation in Case No. PUC-2008-00046 recommending that the three free DA call allowances be reduced over the next two years to one free call allowance. In addition, the Staff also recommends that the Commission revisit the issue in 2010 and determine if the one free DA call allowance should be eliminated altogether. A copy of the Virginia Staff Recommendation is at Attachment 2.

The take-away from the discussion at the hearing concerning other jurisdictions is that Embarq is continually reassessing its DA policy in all of its jurisdictions. In addition, it also underscores that Consumer Advocate has failed to demonstrate by any real evidence that the Authority should somehow be persuaded by action taken in neighboring states. The Consumer Advocate disregards the fact that Florida, Kansas, Minnesota, Nebraska, Nevada, Ohio, Pennsylvania, Texas and Wyoming require no free DA calls. The record in Tennessee supports granting Embarq its requested relief to reduce its free DA call allowances from three per month to one per month. This position, is supported by the Authority's April 17, 2007 Order in Docket No. 06-00232 in which the Authority specifically found that because of the number of reliable alternative sources for DA that are available to Tennessee consumers, it was in the public interest to allow AT&T to reduce its free DA call allowances from three per month to one per month. All Embarq is asking is that it be treated in the same consistent manner as AT&T has already been treated.

### **CONCLUSION**


Based on the foregoing, Embarq respectfully requests the Authority grant its requested relief and approve Embarq Tariff No. 2007-456, so Embarq can reduce its free DA call allowances from three per month to one per month. Further, it is evident that after the conduct of

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<sup>28</sup> See Hearing Transcript at p. 71, lines 15 - 25 and p. 72, lines 1 - 11.

the hearing in this matter that Embarq's request for relief is supported by substantial and material evidence in the record. It is also evident that Consumer Advocate proffered no arguments or evidence that support its position which would require the Authority to reverse course and treat Embarq's tariff differently than the previously approved and virtually identical tariff of AT&T. The approval of Embarq's tariff by the Authority will support the Constitutional guaranty of equal protection of the law and the fundamental requirement of rationality in administrative actions. Therefore, the law and the record in this matter compel a ruling permitting Embarq to reduce its free DA call allowances consistent with the Authority's action in Docket No. 06-00232.

Respectfully submitted this 31<sup>st</sup> day of October, 2008.

  
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing post-hearing brief to counsel listed below by depositing a copy of the same in the United States Mail, first-class postage prepaid, and by electronic transmission to counsel.

This 31<sup>st</sup> day of October, 2008.

Ryan L. McGehee  
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\_\_\_\_\_  
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## Authority Dockets Concerning Price Regulated Incumbent Local Directory Assistance Call Allowances

Docket No.	Price Regulated Incumbent	Date of Final Order	Result
96-01423	United Telephone – Southeast, Inc.	September 4, 1997	Established rate for local directory assistance but with 6 calling allowances and exemptions for the disabled and customers 65 years of age or older.
99-00391	BellSouth Telecommunications, Inc.	July 29, 1999	Same as 96-01423.
04-00416	Bellsouth Telecommunications, Inc.	September 2, 2005	BellSouth local directory assistance call allowances reduced from 6 to 3.
06-00232	Bellsouth Telecommunications, Inc.	April 17, 2007	BellSouth local directory assistance call allowances reduced from 3 to 1.
06-00288	United Telephone – Southeast, Inc.	November 21, 2007	United local directory assistance call allowances reduced from 6 to 3.
07-00269	United Telephone – Southeast, Inc.	Current Case/Pending	United files to reduce local directory assistance call allowances from 3 to 1.
08-00021	Citizens Telecommunications Company of Tennessee LLC	Pending	Citizens files to introduce local directory assistance rate with 2 residential allowances and exemptions for the disabled.
07-00188	Bellsouth Telecommunications, Inc.	Withdrawn	BellSouth filed to reduce local directory assistance call allowances from 1 to 0.

**COMMONWEALTH OF VIRGINIA**  
**STATE CORPORATION COMMISSION**

2008 OCT 24 P 3:59

**STAFF COMMENTS**  
**DIVISION OF COMMUNICATIONS**

**CASE NO. PUC-2008-00046**

**APPLICATION OF**  
**VIRGINIA TELECOMMUNICATIONS INDUSTRY ASSOCIATION**  
**FOR AUTHORITY TO ELIMINATE THE CURRENT REQUIREMENT**  
**FOR A THREE-FREE CALL ALLOWANCE FOR LOCAL DIRECTORY**  
**ASSISTANCE SERVICE**

**OCTOBER 24, 2008**

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION**

**STAFF COMMENTS  
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**CASE NO. PUC-2008-00046**

**APPLICATION OF  
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ASSISTANCE SERVICE**

**OCTOBER 24, 2008**



**COMMENTS OF THE  
DIVISION OF COMMUNICATIONS  
CASE NO. PUC-2008-00046**

**INTRODUCTION**

**Procedural**

On June 11, 2008, the Virginia Telecommunications Industry Association ("VTIA") filed an Application with the State Corporation Commission ("Commission") requesting the elimination of the requirement that Virginia's local exchange carrier ("LECs") include a monthly three free call allowance for local directory assistance ("DA") calls as part of the dial tone line.

The VTIA claims that there are many other DA providers, most of which are not LECs. Therefore, they are not regulated by the Commission and have no monthly free call allowance requirement. The VTIA requests that the three call allowance requirement be eliminated in order to allow LECs to be on the same footing as other providers such as wireless and cable Voice over Internet Protocol ("VoIP"), or over-the-top VoIP. The VTIA further claims that "Competition in the retail directory assistance market is vibrant and growing"<sup>1</sup> and that the competitive market is distorted by imposing the three call allowance only on regulated LECs.

The Commission issued an Order for Notice and Comment on August 7, 2008. This order required notice to the public of the Application and permitted interested persons an opportunity to file comments. In addition, it requested that, at a minimum,

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<sup>1</sup> VTIA Application, p. 3.

comments address "...whether the elimination of the three-free call allowance is warranted or necessary at this time."<sup>2</sup>

### **Background**

The current three call allowance requirement was adopted by final Order in Case No. PUC-1989-00025.<sup>3</sup> The PUC-1989-00025 Order reduced the number of free DA calls from the previously required eight<sup>4</sup> to three. The PUC-1989-00025 Order states:

An essential part of furnishing telephone service is the furnishing of numbers necessary to reach others. Most numbers are available in white page directories compiled, printed, and distributed without charge. Many numbers, including new listings, non-published numbers, and non-listed numbers, do not appear in those directories. For customers trying to reach such numbers, DA should be considered a supplement to the printed directory. A person requesting such a number should not be considered a "cost causer." The cause of such cost is due in large part to the called party whose number was not printed. The cost is not assignable to one or the other, and such unassignable costs should be borne by all customers, as white page costs are borne today.<sup>5</sup>

In addition, the PUC-1989-00025 Order states that reducing the DA call allowance "...should be viewed as merely a temporary concession until the fairest method of charging for directory assistance can be implemented; i.e., charging only for those numbers that are available from the customer's printed directory."<sup>6</sup> Furthermore, the PUC-1989-00025 Order provided a specific means for eliminating the DA allowance

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<sup>2</sup> August 7, 2008 Order, p. 1.

<sup>3</sup> Application of the Virginia Telephone Association for authority to reduce the free call allowance for directory assistance calls, Final Order dated June 7, 1990. ("PUC-1989-00025 Order")

<sup>4</sup> Case No. PUC-1983-00025: Application of the Chesapeake and Potomac Telephone Company of Virginia for an increase in rates, Order dated December 22, 1983. The monthly DA call allowance was increased from six to eight and the rate for a DA call was increased to \$.29 at that time.

<sup>5</sup> PUC-1989-00025 Order, p. 3.

<sup>6</sup> Ibid

in the future. The Order states:

We urge the industry to attempt to determine the most cost effective manner to bill selectively for numbers requested through DA although readily available in the printed directory. When such a system is available, we can drop the DA call allowance to zero for all numbers available in the directory.<sup>7</sup>

### COMMENTS

Comments were filed by Cox Virginia Telcom, L.L.C. ("Cox"), Verizon South Inc. and Verizon Virginia Inc. (jointly, "Verizon"), Central Telephone Company of Virginia and United Telephone Southeast, LLC (jointly, "Embarq"), AT&T Communications of Virginia, LLC and TCG Virginia, Inc. (jointly, "AT&T"), and the Fairfax County Board of Supervisors ("Fairfax County"). In addition, comments were received from 14 individuals and the Communications Workers of America ("CWA"). All the individual comments, including those from the CWA opposed eliminating the three DA call allowance.

#### Cox

Cox supports eliminating the monthly three free call allowance for DA. It states that "...unlike in 1990 when the Commission issued its VTA Order, customers today are no longer wedded to the traditional means to get local directory assistance or even a LEC."<sup>8</sup> It also states "With such options, other states have phased out or eliminated the free call minimums that apply to LECs. The Commission should do likewise."<sup>9</sup>

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<sup>7</sup> Ibid, p. 4.

<sup>8</sup> Cox Comments, p. 3.

<sup>9</sup> Ibid

## Verizon

Verizon supports the VTIA request. It states that the Commission adopted the three call allowance during a time when "...a telephone customer only had two choices for obtaining a telephone number: the telephone book or calling directory assistance."<sup>10</sup> Verizon represents that "Today, a customer seeking a number that is not published in a telephone directory has several free alternatives available beyond calling directory assistance."<sup>11</sup> Verizon also points out that the Commission determined its DA services to be competitive statewide in Case No. PUC-2007-00008.<sup>12</sup>

Verizon's Comments include two Attachments (A and B). Attachment A presents DA rates and structures of other DA providers and sources in Virginia, including competitive local exchange carriers ("CLECs"), wireless companies, 1-800 numbers, Text Messaging, Internet/Online, and alternative white/yellow page directories.

Attachment B presents monthly free call allowances and DA rate information (business and residential) in other Verizon states where it is the incumbent local exchange carrier ("ILEC"). This Attachment shows that in Verizon's 29 operating territories,<sup>13</sup> only six jurisdictions require a call allowance for business customers and eleven require a call allowance for residential customers.

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<sup>10</sup> Verizon Comments, p. 1.

<sup>11</sup> Ibid, p. 2.

<sup>12</sup> Application of Verizon Virginia Inc. and Verizon South Inc. for a Determination that Retail Services are Competitive and Deregulating and Detariffing of the Same, Case No. PUC-2007-00008, Order issued December 14, 2007 ("Verizon Deregulation Order"), p. 56.

<sup>13</sup> This includes the District of Columbia and two operating service territories in Virginia, Pennsylvania, and North Carolina.

Verizon states that it has seen significant declines in its DA call volumes and revenues during the period 2002 to 2007.<sup>14</sup> In addition, it shows that many of its customers are not taking advantage of the existing three call allowance. According to Verizon, 82% of residential customers make no calls to DA in any given month and 91% make one call or less.<sup>15</sup> Furthermore, it represents that “Approximately 1% of residential customers account for 54% of all billable local directory assistance calls completing 11 or more DA calls monthly.”<sup>16</sup> On the business side, according to Verizon, 79% of its business customers make no calls to DA in a given month; with 2% of its business customers accounting for 54% of all local DA calls.<sup>17</sup>

### **Embarq**

Embarq supports the VTIA request. It contends that there are numerous competitive (and unregulated) alternatives to the LEC’s DA services. Embarq states that it is not

...calling for the Commission to expand the reach of the DAS [directory assistance service] call allowance requirement to carriers over which the Commission has no jurisdiction. Rather, as the VTIA requests, the Commission’s DAS requirement should be eliminated altogether. Such action will ensure that the playing field between the LECs and non-LEC providers of DAS is leveled, because non-LEC providers are not required or obligated to provide the three monthly DA call allowances.<sup>18</sup>

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<sup>14</sup> The actual percentage declines are provided in the confidential version of Verizon’s Comments.

<sup>15</sup> Verizon Comments, p. 3.

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Embarq Comments, p. 3.

Further, it states that "...non-LEC providers of DAS offer their services in convenient, readily accessible, and consumer friendly ways to all takers in Virginia."<sup>19</sup>

### **AT&T**

AT&T supports the VTIA Application. It states that "...published telephone numbers are available from many sources today and such information is the subject of a robust marketplace."<sup>20</sup> AT&T also points out that ILECs are "...obligated by Federal law to offer directory listing data to competitive DA providers at a cost-based rate, a requirement that has spawned a number of competitive DA services."<sup>21</sup>

In addition, according to AT&T, many of the DA service providers are not subject to "outmoded regulations" that are still being imposed on regulated LECs, and that customers now have the Internet to obtain directory listings. It represents that customers may access listings through wireless companies, cable television companies, VoIP providers, and other directory information sources (e.g., 1800YellowPages or 1 800 FREE 411).

AT&T states that "In light of the proliferation of sources of published directory information, regulators have increasingly acknowledged that free-DA call allowance policies were anachronisms from the monopoly era and which had been adopted in the monopoly era."<sup>22</sup> Further, it claims that in the 22 states where it operates as an ILEC, it is required to provide a call allowance in only one state. However, AT&T notes that it has not eliminated all DA call allowances in those states. It claims that "In some

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<sup>19</sup> Ibid

<sup>20</sup> AT&T Comments, p. 2.

<sup>21</sup> Ibid

<sup>22</sup> AT&T Comments, p. 4.

instances AT&T and other carriers may elect to offer free DA calls as a way to attract customers and distinguish themselves in the market.”<sup>23</sup>

### **Fairfax County**

Fairfax County recommends that the Commission deny the VTIA request. It claims that with the on-going problems with Verizon’s directories “...eliminating the allowance would penalize those customers who are unable to locate an accurate listing in the directory and must call the local DA service provided by their local exchange company.”<sup>24</sup>

In addition, it points out that the Verizon Deregulation Order determined directory assistance service to be competitive but did not eliminate the call allowance at that time because it found it to be “...reasonable to continue to require Verizon to offer the first three directory assistance calls per month at no cost to the consumer.”<sup>25</sup> Furthermore, it argues that directory errors and omissions are still a problem in Fairfax County as evidenced by the Staff’s audit of Verizon’s Northern Virginia directory, which failed with 12 service affecting errors.

Fairfax disputes the VTIA’s claims regarding the “vibrant” competitive DA market. It argues that only AT&T’s 1-800-YellowPages could be considered a “reasonable alternative” to the LECs for residential and government listings. It states that the other DA services identified by the VTIA are “...significantly limited or of much

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<sup>23</sup> Ibid, p. 3-4. Footnote 6, identifies North Carolina as an example where AT&T provides residential and business customers with three free DA calls per month even though the Commission has authorized the Company to reduce this allowance at a rate of one per year if it so chooses.

<sup>24</sup> Fairfax County Comments, p. 1.

<sup>25</sup> Verizon’s Deregulation Order at p. 56.

inferior quality to LEC-provided DA”<sup>26</sup> and many are geared towards only business listings.

### **Communications Workers of America**

The CWA opposes eliminating the monthly three call allowance for carriers of last resort as a public safety issue. It points out that in an emergency, many customers may need to call DA for easy and prompt access to important numbers (doctor, pharmacy, or hospital) when there is not time for an Internet search. The CWA acknowledges that there are other DA providers but those are primarily available only with Internet access. It claims that many citizens are not aware of the other DA options available to them (e.g., 1-800-CALL411), struggle to read small print, do not have a computer, and may not be technology savvy. In addition, according to the CWA, if customers continue to use DA without a call allowance, this can, for many on a fixed income, prove to be difficult for them to pay.

### **DISCUSSION**

The current DA three call allowance has been in effect for over 18 years. In that same time period, the telecommunications marketplace and communications as a whole have seen, and continues to see, vast changes. Competition and technological advancements have brought forth new services and features, and emergent industries have grown.

We agree with many of the comments that consumers have many more choices

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<sup>26</sup> Fairfax County Comments, p. 3.



today to traditional DA services. In fact, the Staff in Case No. PUC-2007-00008 supported reclassifying Verizon's DA services as competitive.<sup>27</sup>

However, as the PUC-1989-00025 Order noted, the purpose of the DA call allowance was to supplement the printed directory. At that time, the concern was that many listings (new, non-published, and non-listed numbers) did not appear in the directories; therefore, a customer would need to call DA to try and obtain such numbers or in some instances find out that the telephone number wasn't available at all (i.e., non-listed). The solution the Commission was seeking was for the industry "...to determine the most cost effective manner to bill selectively for numbers requested through DA although readily available in the printed directory."<sup>28</sup> Accordingly, once such a billing system was made available, the Commission intended to "...drop the DA call allowance to zero for all numbers available in the directory."<sup>29</sup> To date, no LEC has implemented such a billing system as a trade-off to drop the requirement to have a DA call allowance.

We recognize that today, while the above concerns still exist, customers have more alternatives to the LECs' printed directories and directory assistance to obtain telephone numbers. Some DA services are free (i.e., Internet), others may have no charge but require the caller to listen to advertisements, and others charge for the service. Many households and businesses have Internet access and are able to take advantage of websites such as [www.anywho.com](http://www.anywho.com) to obtain telephone listings. However, there are certainly still a number of customers without computers or Internet access who must still rely on printed directories or directory assistance to obtain listings. In addition, no

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<sup>27</sup> See testimony of Kathleen A Cummings filed June 27, 2007, pp. 26-30.

<sup>28</sup> PUC-1989-00025 Order, p. 4.

<sup>29</sup> Ibid

evidence has been presented to demonstrate that alternative DA providers are able to furnish numbers not available in directories or through the LEC's directory assistance.

Unfortunately, we recently have found that there are additional concerns with some printed directories that may prevent customers from finding certain telephone numbers that should otherwise be in a directory. Case No. PUC-2005-00007<sup>30</sup> arose as a result of numerous customer complaints regarding errors and omissions in Verizon's printed directories. (Presumably, these same errors and omissions exist in listings of alternative DA providers.) A settlement between Verizon and the Staff was reached regarding past directories to reimburse individuals and businesses whose telephone listings were excluded or in error (service affecting) from those past directories. As a part of the Commission approved settlement, the Staff is conducting audits on Verizon's white page directories until October 31, 2010.<sup>31</sup> To date 21 audits have been completed, and four have failed.

### CONCLUSION

The Commission needs to determine whether requiring a DA call allowance for all LECs is still viable and reasonable in today's environment. As mentioned by many parties, there have been numerous changes in the industry since the Commission last considered the DA allowance. The PUC-1989-00025 Order noted that the cost of the exclusion of many telephone numbers was not the fault of the person seeking the number but was instead an unassignable cost that should be borne by all customers. However, LECs (CLECs and ILECs) do not operate in a marketplace where they can necessarily

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<sup>30</sup> Ex Parte: In the Matter of Investigating Directory Errors and Omissions of Verizon Virginia Inc. and Verizon South Inc. Case No. PUC-2005-00007 Order dated February 13, 2007.

<sup>31</sup> The sunset period for completion of the audits was extended by Order dated October 2, 2008.

just raise the price of one service to recover the cost of another service. In other words, we cannot assume that a LEC can recoup the cost of providing a directory allowance by charging more for related services such as DA, non-published numbers, and non-listed numbers. In a more competitive marketplace, it is not possible to treat the exclusion of numbers from directories (for whatever reasons) as “unassignable” to be borne by all customers. On the other hand, a directory listing allowance may still be in the public interest to ensure that customers are not forced to pay to seek telephone numbers that are neither available in their printed directory nor available from alternative DA providers, particularly for those that are not available because an error or omission by the customer’s LEC.

However, it does not appear that most customers (at least in Verizon’s case) use all (or even any) of the three DA call allowance on a regular basis. It also appears that only a small percentage of Verizon’s customers call DA more than once in a given month. Unfortunately, other LECs operating in Virginia did not submit comparable data to that provided by Verizon. Moreover, we do not have the number or percentage of calls to DA that are made by customers that are for listings that are unavailable in the printed directory.

The Commission may wish to consider alternatives to the total elimination of the monthly DA call allowance. It may be reasonable to take a more modest step by reducing the number of DA calls included in an allowance, particularly as it appears that many customers do not call DA on a regular basis. In addition, the Commission could establish different call allowances applicable to residential and business customers.

One such approach that may have merit is to reduce the number of calls or eliminate the DA call allowance over time. This would be a reasonable approach, particularly during the period the Staff is auditing Verizon's white page directories. For example, the DA allowance could be reduced to two on January 1, 2009, and further reduced to one on January 1, 2010. At that point, the Commission could consider whether a final step to eliminate totally the DA allowance would be warranted (i.e. on January 1, 2011). This would allow the Commission to consider the quality of the published directories and availability of alternative DA sources **at that time** before it completely eliminates the DA allowance.