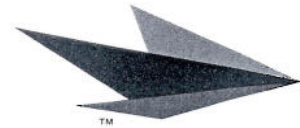


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EMBARQ™

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14111 Capital Boulevard
Wake Forest, NC 27587-5900
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December 14, 2007

Chairman Eddie Roberson
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

filed electronically in docket office on 12/14/07

Re: Response of United Telephone-Southeast, Inc. d/b/a Embarq to the Consumer Advocate and Protection Division's Complaint and Petition to Intervene
Docket No. 07-00269

Dear Chairman Roberson:

Enclosed are an original and four (4) copies of the Response of United Telephone-Southeast, Inc. d/b/a Embarq ("Embarq") to the Consumer Advocate and Protection Division's Complaint and Petition to Intervene in the above-referenced Docket. Embarq has already filed this petition electronically and this letter is the required follow-up to that filing.

Please do not hesitate to contact me if you have any questions concerning this request.

Sincerely yours,

Edward Phillips

HEP:sm

Enclosures

cc: Tennessee Attorney General & Reporter
Office of the Tennessee Attorney General

Edward Phillips
ATTORNEY
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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)	Docket No. 07-00269
Tariff Filing to Increase Rates in Conjunction With)	
the Approved 2007 Annual Price Cap Filing)	
)	

**RESPONSE OF UNITED TELEPHONE-SOUTHEAST, INC. d/b/a EMBARQ
TO THE CONSUMER ADVOCATE AND PROTECTION DIVISION'S
COMPLAINT AND PETITION TO INTERVENE**

United Telephone-Southeast, Inc. d/b/a Embarq ("Embarq") files this Response to the Complaint and Petition to Intervene ("Complaint") filed on December 11, 2007, by the Office of the Attorney General, Consumer Advocate and Protection Division ("CAD"). CAD seeks a contested proceeding in opposition to Embarq's proposed Tariff No. 2007-456 ("Tariff").¹ Embarq respectfully shows the Tennessee Regulatory Authority ("Authority") as follows:

INTRODUCTION

The CAD's Complaint does not seek suspension of Embarq's Tariff. Moreover, the CAD does not take issue with Embarq's proposed rate increase. According to the CAD, the sole purpose of the Complaint is to ask the Authority to convene a contested case seeking "the

¹ Notably, the CAD'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 CAD's Complaint did not allege with particularity how the complaining party (in this case, the CAD) would be injured by the Tariff, did not allege that the Tariff violated a specific law, and did not demonstrate that the CAD 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 Tenn. Code Ann. § 65-5-101(c)(3). The Authority may still "choose to convene a contested case, or decline to convene a contested case, in its own discretion, to promote the public interest." Tenn. Code Ann. § 65-5-101(c)(3)(c). As discussed below, however, the CAD's Complaint, which is short on substance, offers no valid basis to conclude that the Tariff warrants further consideration by the Authority.

preservation of the status quo for all companies to provide free directory assistance allotments until the TRA can complete a thorough review of directory assistance policy . . .” See the CAD’s Complaint, at p. 3. The Authority has already established a “directory assistance policy.” As the CAD is aware, the Authority allowed BellSouth Telecommunications d/b/a AT&T (“AT&T”) to implement a revised tariff reducing its Directory Assistance allowance to one call per month at Docket No. 06-00232. Indulging the CAD in its request is not about preserving the “status quo,” but rather circumvents the law and creates a discriminatory situation relative to Embarq’s tariff.² Also, it is not surprising that the CAD fails to challenge the proposed rate increase.³ Embarq’s proposed rate increase and Directory Assistance provisions fully comply with Embarq’s price regulation plan, Tenn. Code Ann. § 65-5-109, and current Authority precedent established in Docket No. 06-00232 – all of which the CAD conveniently ignores in its Complaint.

I. Historical Treatment of Directory Assistance by the Authority

The Authority determined that Directory Assistance is non-basic service under Tenn. Code Ann. § 65-5-108(a) in Authority Docket No. 96-01423.⁴ In that proceeding, the CAD attempted to convince the Authority otherwise. However, the majority of the Authority voted to reject the CAD’s arguments that Directory Assistance should be treated as a basic telecommunications service. The Authority’s decision was upheld by the Tennessee Court of Appeals.⁵ In its order, the Court held that the Authority has the authority under applicable

² See the Authority’s April 17, 2007 *Order Granting BellSouth Tariff No. 2006-00431*.

³ Embarq’s Tariff would increase the rate for a Directory Assistance call from \$.50 to \$.95, which is below the approved tariffed prices for Directory Assistance service already in place for AT&T.

⁴ See *Order Approving in Part and Denying in Part Tariff No. 96-201*, Docket No. 96-01423, at p. 17.

⁵ See *Opinion, Consumer Advocate Division v. Tennessee Regulatory Authority*, No. M1997-00238-COA-R3-CV, 2002 WL 1579700 (Tenn. Ct. Appeals), July 18, 2002, p. 5 in which the Court concluded the Authority’s statutory construction supporting its decision that directory assistance is non-basic “is the correct one.”

statutes to impose conditions on how Directory Assistance is to be provided.⁶ Embarq's proposed tariff altering the charges and number of free Directory Assistance calls to one is consistent with the requirements of Tenn. Code Ann. § 65-5-109, Embarq's approved 2007 price regulation plan, and Authority precedent.

The law is absolutely clear: As a price regulated entity, Embarq is limited in its ability to change the price it charges for Directory Assistance only by the revenue available to it pursuant to annual price regulation filing in Tennessee. As demonstrated by Embarq's approved 2007 price regulation plan, Embarq has sufficient revenue to make the Directory Assistance changes associated with this tariff filing. The CAD does not allege the contrary. In short, Embarq's tariff is 100% compliant with the law and the CAD has failed to demonstrate otherwise. Embarq's tariff should be approved as proposed and without any delay.

II. One Directory Assistance Call per Billing Period

The CAD's Complaint relies solely on the Court of Appeals decision which affirmed the Authority discretion exercised in Docket No. 96-01423 to require a free call allowance in the context of that case.⁷ However, there is no Tennessee law, Authority Order, or Authority Rule prohibiting only one free Directory Assistance call per billing period. The CAD's Complaint provides no legal support or citation suggesting that Embarq cannot reduce the number of Directory Assistance calls from three to one. As a matter of fact, Embarq's tariff is consistent with existing tariff provisions already approved for AT&T. As a result, the CAD's Complaint circumvents the law and creates a discriminatory situation relative to Embarq's proposed tariff.

Not only does the CAD fail to mention the Authority's decision in Docket No. 06-00232, but also absent from the CAD's Complaint is any reference to the Authority's *Order Declining*

⁶ *Id.* at 9.

⁷ *CAD v. Tennessee Regulatory Authority*, 2002WL 1579700*7 (Tenn. Ct. App. 2002).

to Convene Contested Case as to BellSouth Tariff No. 2004-1433 and Denying CAD Complaint and Petition to Intervene (Docket No. 04-00146). In that docket, the Authority found that the Complaint and Petition to Intervene filed by the CAD relative to BellSouth's proposed changes (from six to three free calls per month) failed to meet the statutory requirements for convening a contested case as set forth in Tenn. Code Ann. § 65-5-101(c).

Directory Assistance call allowances have been changed, with Authority approval, twice since the Court of Appeals Directory Assistance decision was issued. In fact, when the Authority first considered reduction in Directory Assistance exemptions after the appeal, these same issues were raised and properly rejected. The Authority rightly recognized the benefit of targeting the exemption to the customers who most need the service. In addition, the Authority must put the CAD's purely policy-based claim in a realistic context. Today, as supported by the Authority's findings in Docket No. 06-00232, many Internet and alternative services are available to provide directory information at no charge.

It is important to reiterate that, under Embarq's tariff, there is still no charge for the first Directory Assistance call per billing period. Embarq's tariff, therefore, is fully consistent with the standard adopted by the Authority in Docket No. 06-00232. In addition, all Directory Assistance calls made by disabled Tennesseans and all those calls made by Tennesseans 65 and older, as set forth in the Tariff, are provided to such customers completely free of charge. More importantly, when approving AT&T's existing tariff in its April 17, 2007 Order, the Authority stated that "[g]iven 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." See the Authority's April 17, 2007 Order, at p. 5. With this precedent in mind, the Authority should also find that Embarq's Tariff is "reasonable and not adverse to the public interest" approving the same as proposed. The proposed tariff complies with the law and

existing policy and practice of the Authority. The CAD's Complaint should be denied as inconsistent with law and as leading to discriminatory and disparate treatment among the incumbent local exchange carriers operating in Tennessee.

CONCLUSION

For the foregoing reasons, Embarq urges the Authority to deny and dismiss the Complaint and Petition to Intervene filed by the CAD in light of the CAD'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 Authority has been vested by the General Assembly with discretion to choose when to convene a contested case.⁸ In this matter, a contested case will not serve the public interest because the CAD has raised no legitimate basis on which to convene a contested case as Embarq's Tariff complies fully with the Tenn. Code Ann. § 65-5-109, Embarq's price regulation plan, and is consistent with Authority precedent permitting one free Directory Assistance call per billing period. The CAD's Complaint and Petition to Intervene should be denied.

Respectfully submitted this 14th day of December, 2007.



Edward Phillips
Attorney

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⁸ Tenn. Code Ann. § 65-5-101(c)(3)(c).

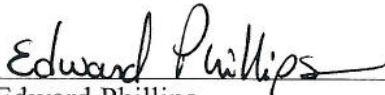
CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Response of United Telephone-Southeast, Inc. d/b/a Embarq ("Embarq") to the Consumer Advocate and Protection Division's Complaint and Petition to Intervene by depositing a copy in the United States Mail, first-class postage prepaid.

This 14th day of December, 2007.

Robert E. Cooper, Jr.
Tennessee Attorney General & Reporter
Office of the Tennessee Attorney General
P. O. Box 20207
Nashville, TN 37202-0207

Ryan L. McGehee
Assistant Attorney General
Office of the Tennessee Attorney General
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Edward Phillips
United Telephone-Southeast, Inc.