

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

**IN RE: UNITED TELEPHONE-SOUTHEAST
INC. d/b/a EMBARQ CORPORATION
TARIFF FILING TO INCREASE RATES IN
CONJUNCTION WITH THE APPROVED
2007 ANNUAL PRICE CAP FILING**

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DOCKET NO. 07-00269

MOTION TO STRIKE

The Attorney General & Reporter Robert E. Cooper, through the Consumer Advocate and Protection Division (“Consumer Advocate”) respectfully submits this Motion to Strike for consideration by the Tennessee Regulatory Authority (“TRA”, “Authority”). Specifically, this motion addresses portions of the *Response* filed on January 30, 2009 by United Telephone Southeast LLC d/b/a Embarq (“Embarq”, “Company”). As grounds, the Consumer Advocate submits the follows: (1) Embarq cannot raise new and untested claims at this point to counter the positions of the Consumer Advocate raised prior to the hearing on the merits when it had ample opportunity during a year-long proceeding to do so and (2) Embarq cannot be allowed to second guess and attack the final outcome of the Virginia directory assistance (“D.A.”) proceeding when it repeatedly relied upon the filings in that proceeding in support of its position throughout this docket and at the hearing on the merits.

**I. Embarq Cannot Bring New Claims When The Company Had Ample Time To Do
So During The Course Of This Docket**

Embarq’s *Response* seeks to inject new positions into this Docket, namely its claim that

the Company provides updates of local directory listings to “national providers” of directory assistance and that these updates do not hinder the availability of accurate information to alternative D.A. providers such as those on the internet. This new claim is now made without having been subject to discovery and cross-examination. Embarq had a full year in which to raise this issue and did not. Seeking to inject a new position into this docket without discovery, sworn testimony and cross-examination is patently inappropriate and unfair.

At no point during the hearing on the merits in this matter did the Company offer testimony on this new position. At no point did the Company’s witness make this claim within pre-filed direct and rebuttal testimony. On the contrary, the Consumer Advocate raised the issue of the accuracy of listing information provided by directory assistance alternatives such as 1-800-Free411 in Mike Chrysler’s Direct Testimony filed on July 1, 2008. The Company made no response in pre-filed rebuttal testimony or live testimony at the hearing. Nor did the Company cross-examine Mr. Chrysler on the subject at the hearing in this matter.

II. Embarq Should Be Precluded From Attempting to Rebut the Outcome of Virginia Case No. PUC-2008-00046

One can only conclude Embarq’s new position and claims are an attempt to discredit and second guess the decision of the Virginia Corporation Commission in Case No. PUC-2008-00046 in which the Virginia Commission rejected the petition of the telecommunications industry to end mandatory call allowances. As discussed in the Consumer Advocate’s *Motion to Reconsider*, the Virginia Commission determined a two call allowance was necessary to protect consumers. In part, the rationale of the Virginia decision was based on the fact that not all telephone listings provided by the alternatives to traditional D.A. are accurate or available. This fact was among the concerns Mr. Chrysler provided in his pre-filed direct testimony which

Embarq failed to rebut or address during the course of this proceedings.

Embarq repeatedly relied upon the then on-going Virginia directory assistance case in support of its position in this docket. The Company made much of the fact the proceeding was taking place and included a copy of a filing made in the Virginia D.A. matter to support Embarq's position in Tennessee. However, the final order of the Virginia Commission on the matter, issued on December 23, 2008, which is attached to the Consumer Advocate's *Motion to Reconsider*, does not support Embarq's position. The Company now seeks in its *Response* to discredit the actual outcome of the Virginia proceeding with untested claims in Tennessee. The Company simply cannot be allowed to have it both ways.

Thus, the Consumer Advocate respectfully moves the Hearing Officer or in the alternative, the Hearing Panel, to strike from the record pages two and three of the Embarq's *Response* to the Consumer Advocate's *Motion for Reconsideration*.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Post-Hearing Brief was served on the party below via facsimile, U.S. Mail, hand delivery, commercial delivery, or e-mail, on the 22 day of February 2009.

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