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March 4, 2009

filed electronically on 03/04/09

Chairman Eddie Roberson
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Re: Response of United Telephone Southeast LLC d/b/a Embarq

Docket No. 07-00269

Dear Chairman Roberson:

Please find enclosed for filing in the above-referenced docket the original and four (4) copies of United Telephone Southeast LLC d/b/a Embarq ("Embarq's") Response to the Motion to Strike filed by the Consumer Advocate and Protection Division on February 24, 2009. Embarq has already filed the enclosed response electronically and this letter is the required follow-up to that filing.

An extra copy of this letter and the response are enclosed. Please stamp those documents as "Filed" and return them 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: Ryan McGehee

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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 LLC d/b/a EMBARQ TO THE
CONSUMER ADVOCATE AND PROTECTION DIVISION MOTION TO STRIKE**

United Telephone Southeast LLC d/b/a Embarq (“Embarq”) hereby submits its Response to the Motion to Strike filed by the Office of the Tennessee Attorney General Consumer Advocate and Protection Division (“Consumer Advocate”) on February 24, 2009. The Consumer Advocate filed its February 24th Motion to Strike in response to Embarq’s Response in Opposition to the Consumer Advocate’s Motion for Reconsideration.¹

The Consumer Advocate’s Motion to Strike concerns the allegations that Embarq is raising a new and untested claim and that Embarq is also “second guessing and attacking” the final outcome of the Virginia Directory Assistance (“DA”) proceeding (Case No. PUC-2008-00046).² The Consumer Advocate’s Motion is not relevant and should be denied. In addition, Embarq renews its request that the Authority deny the Consumer Advocate’s Motion for Reconsideration. It should also be noted that if the Authority denies the Consumer Advocate’s Motion for Reconsideration based on the majority’s previous actions approving the reduction of

¹ On January 23, 2009, the Consumer Advocate filed its Motion for Reconsideration of the Tennessee Regulatory Authority’s (“Authority’s”) January 8, 2009 Final Order. Embarq filed its Response in Opposition to such motion on January 30, 2009.

² The Virginia State Corporation Commission (the “SCC”) issued its Final Order in Case No. PUC-2008-00046 on December 23, 2008.

Embarq's free monthly DA call allowances from three to one, such action will render the Advocate's Motion to Strike moot.

I. The Consumer Advocate's Motion to Strike Should Be Denied.

The Consumer Advocate's discussion of the SCC Final Order is irrelevant because there is no evidence the VA Staff Recommendation was relied upon by Authority in rendering the decision here. During the course of this proceeding, while the parties openly discussed the DA issue as it related to other jurisdictions, the majority made it abundantly clear that it was only concerned with what was occurring in Tennessee and the impact the agency's decision would have on Tennessee consumers.³ Throughout the time that it took to hear and decide the matter, the Authority heard Tennessee specific evidence and rendered a sound policy decision based on that evidence. In rendering its decision on December 15, 2008, the majority did not mention any reliance on the VA Staff Recommendation in any shape or form or that the reasoning set forth in that recommendation supported the majority's sound policy decision here.

Despite this background, the Consumer Advocate filed a Motion for Reconsideration based on the SCC's Final Order. The SCC's decision was based in part, on the concern that a reduction in the call allowances "would require customers to pay to obtain telephone numbers that are neither available in their printed directories nor through an alternative DA source."⁴

In filing its Response in Opposition to the Consumer Advocate's Motion for Reconsideration, Embarq set forth the fact that it cannot control "how often alternative providers update their local directory assistance databases." Embarq also stated that it does nothing to "hinder" access by alternative providers to Embarq's database, which is updated by Embarq on a

³ See pp. 89-90 of the October 6, 2008 Hearing Transcript when Chairman Roberson questioned the Consumer Advocate's witness, Mr. Terry Buckner concerning the situation in Hawkins County Tennessee, in which AT&T served part of the county and its customers have one DA allowance and Embarq's customers have three.

⁴ See the SCC's Final Order in Case No. PUC-2008-00046 at p. 3. The order can be found at the following link: http://docket.scc.state.va.us/CyberDocs/Libraries/Default_Library/Common/frameviewdsp.asp?doc=85622&lib=CA SEWEBP%5FLIB&mimetype=application%2Fpdf&rendition=native

daily basis.⁵ It is these limited statements that the Consumer Advocate now seeks to strike. Embarq made these statements for the Authority's benefit to explain the service it provides to alternative DA providers and how Embarq manages its DA database.⁶ The Authority should be free to give these statements whatever weight they deserve.

However, in an effort to demonstrate a basis upon which to re-open the case, the Consumer Advocate repackages its assertion concerning the accuracy of DA alternatives in light of the SCC's Final Order. Despite these attempts by the Consumer Advocate, its actions will not breathe new life into a concern that the Authority already knew about prior to its deliberations.⁷ Further, the Consumer Advocate's witness Mr. Chrysler discussed the topic of accuracy of DA alternatives in his pre-filed direct testimony, as such concern related to the voice recognition software of one DA alternative provider and not the accuracy of the listing information found in the database. Now, the Consumer Advocate seeks to confuse the issue by overstating the breadth of the accuracy issue discussed in its pre-filed testimony.⁸

II. CONCLUSION

Based on the foregoing, Embarq respectfully requests the Authority deny the Consumer Advocate's pending Motion for Reconsideration, and dismiss the Consumer Advocate's Motion to Strike as moot. However, if the Authority considers the merits of the Consumer Advocate's Motion to Strike, then Embarq respectfully submits that its arguments set forth above compel a denial of the Motion to Strike.

⁵ See Embarq Response in Opposition at p. 2.

⁶ Both the SCC Order and Staff Recommendation are public documents of which the Authority can take judicial notice of pursuant to Tenn. Code Ann. §§ 4-5-313 and 65-2-109 if it so chooses.

⁷ See the VA Staff Recommendation at p. 11. The Authority was privy to the Virginia Staff's concern as the Staff Recommendation was attached as Attachment 2 to Embarq's Post-Hearing Brief filed on October 31, 2008. Given its deliberations, the Authority chose not to consider the Virginia information.

⁸ See Consumer Advocate's Motion for Reconsideration at p. 5 and its Motion to Strike at p. 2.

Respectfully submitted this 4th day of March, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing response 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 4th day of March, 2009.

Ryan L. McGehee
Assistant Attorney General
Office of the Tennessee Attorney General
Consumer Advocate and Protection Division
P.O. Box 20207
Nashville, Tennessee 37202-0207



Edward Phillips
Attorney
United Telephone Southeast LLC d/b/a/ Embarq