

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

<b>IN RE: UNITED TELEPHONE-SOUTHEAST</b>	)	
<b>INC. d/b/a EMBARQ CORPORATION</b>	)	
<b>TARIFF FILING TO INCREASE RATES IN</b>	)	<b>DOCKET NO. 07-00269</b>
<b>CONJUNCTION WITH THE APPROVED</b>	)	
<b>2007 ANNUAL PRICE CAP FILING</b>	)	
	)	

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**REPLY OF THE CONSUMER ADVOCATE TO THE RESPONSE OF EMBARQ TO  
THE MOTION TO STRIKE**

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The Attorney General & Reporter Robert E. Cooper, through the Consumer Advocate and Protection Division ("Consumer Advocate") respectfully submits this Reply for consideration by the Tennessee Regulatory Authority ("TRA", "Authority"). Specifically, this Reply addresses portions of the *Response to the Motion to Strike* filed on March 4, 2009 by United Telephone Southeast LLC d/b/a Embarq ("Embarq", "Company").

**I. Embarq's Reply is Without Merit Under Tennessee Law**

Embarq's position that new and untested claims of fact can be brought up after the hearing is not supported by Tennessee law. On matters of reconsideration, Tenn.Code Ann. § 4-5-317 (e) forbids a party from introducing new evidence unless the party proposing such evidence shows good cause for such party's failure to introduce the evidence in the original proceeding. The Consumer Advocate's *Motion for Reconsideration* relies upon facts and testimony regarding concerns about the accuracy of D.A. alternatives that are already in the

record.<sup>1</sup> Embarq's new and untested claims of fact in response are not part of the factual record in this proceeding. Embarq had more than sufficient time to address the Consumer Advocate's pre-filed testimony expressing concerns about the accuracy of listing information provided by directory assistance ("D.A.") alternatives in rebuttal testimony and at the hearing. Yet the Company did not.

At no point in the Company's rebuttal or hearing presentation address this issue or cross examine Mr. Chrysler on his opinions. Nor does the Company now come forward and offer any good cause for bringing new and untested claims of fact. Rather Embarq simply submits that the *Motion to Strike* is not relevant as if the Company's new and untested claims of fact are permissible and acceptable without the need for discovery and cross-examination. The Company's position simply does not comply with the law. Thus, Embarq's failure to address this issue at the hearing should not be rewarded with allowing the Company to make new and untested claims of fact after the hearing for which the Consumer Advocate has not been able to discover and cross-examine.

## **II. Embarq's Response Is Inaccurate Based on the Record**

Embarq states inaccurately the scope of Mike Chrysler's pre-filed direct testimony of July 1, 2008 as to suggest Mr. Chrysler's concerns about D.A. alternatives had nothing to do with their accuracy in providing listings. At page 3, the Company claims Mr. Chrysler's pre-filed Direct Testimony addressed the topic of accuracy D.A. alternatives in his pre-filed direct testimony "as such concern related to voice recognition software of one D.A. alternative and not

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<sup>1</sup> The only new fact raised by the Consumer Advocate is the Virginia Order resolving Case No. PUC-2008-00046, which was not issued until after the TRA Hearing Panel made a determination on the merits in this docket. Embarq relied upon the then on-going Virginia proceeding at the hearing in this matter and the company's post-hearing brief.

the accuracy of listing information found in the database.” This statement is not supported by a simple reading of Mr. Chrysler’s pre-filed testimony. In fact Mr. Chrysler addressed the issue of the accuracy of listing information from alternatives sources in his pre-filed direct testimony filed on July 1, 2008.

**Q-8     Is there a free alternative to traditional D.A. for residential and business listings?**

A-8     Yes. A service called “1-800-Free-411” is available. *However, I have doubts about its accuracy for being able to provide correct listing information. A random sampling reveals that this service could not provide listing information for some listings that are already in Embarq’s published directories.* In addition, this service is not well known or advertised, most consumers still look to the phone company itself. Currently, its advertisement efforts appear to be restricted to the Internet. (emphasis added)

In fact, Mr. Chrysler’s concerns in his pre-filed direct testimony about the accuracy phone listings is not limited to just one D.A. alternative, 1-800-Free411, but extends to accuracy issues with internet websites that provide directory assistance information.

**Q-9     Is the Internet a prominent alternative to traditional D.A.?**

A-9     Yes. The Internet is what could be termed a “non-traditional” provider of residential and business phone listings. There are various search engines from which a consumer may locate a phone listing. *Although accuracy and efficiency is sometimes a concern, the Internet is a viable alternative to finding residential and business listings.* However, simply because alternatives such as the Internet exist does not mean that all Tennesseans can forgo traditional telephone services such as directory assistance. (emphasis added)

Clearly, the scope of Mr. Chrysler’s pre-filed direct testimony goes beyond a “concern

related to voice recognition software” of D.A. alternatives. In fact, Mr. Chrshlyer’s testimony does not so much as mention problems with “voice recognition software.” The Company has confused Mr. Chrshlyer’s testimony in this proceeding with comments he made at the directory assistance policy workshop on February 24, 2009 in Docket 09-00012. During the public workshop, Mr. Chrshlyer expressed his personal experience with the difficulty an automated D.A. alternative had understanding his request for a telephone listing. In addition, he also discussed concerns about accuracy of listing information from these sources. The Company’s *Response* concludes in error Mr. Chrshlyer’s comments about his personal experience at a public workshop are the only concerns the Consumer Advocate expressed in Docket 07-00269. The record clearly indicates otherwise and all statements to the contrary must be stricken from the record.

In any event, alternative D.A. sources have not been shown to have provided accurately all numbers requested. No party to this docket has proven or even argued that D.A. alternatives are infallible. On the contrary, the record in this matter indicates at least one alternative D.A. source cannot provide listing information for phone numbers that are *already* in the Embarq’s printed directories.<sup>2</sup> If an alternative D.A. source cannot provide phone listings that are already in a printed directory, how can such an alternative be relied upon to provide phone listings that are not in a printed directory?

Mr. Chrshlyer’s testimony on these issues is not contested. Thus, there is no presumption in this Docket that alternatives to traditional D.A. service are infallible. Neither Embarq nor the TRA can act to make D.A. alternatives more accurate. Regardless of the Company’s post-hearing filings, the bottom line on this issue is that the accuracy of D.A. alternatives is an unknown

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<sup>2</sup> Consumer Advocate’s Response to the Second Discovery Request of Embarq, Discovery request 13 (filed July 18,

quantity. The Virginia Order recognized this.<sup>3</sup> The Virginia commission staff recommendation, attached to and relied upon in Embarq's post-hearing brief filed October 31, 2008, recognized this as well.<sup>4</sup> Embarq cannot now claim that this was never an issue in this docket nor can it simply raise new and untested claims of fact to support its position.

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* filed on January 30, 2009 and pages 2 and 3 of Embarq's *Response to the Motion to Strike* filed on March 4, 2009.

Respectfully Submitted,



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2008).

3 Final Order of the Virginia State Corporation Commission, Case No. PUC-2008-00046, p. 6. (issued December 23, 2008). A copy of the order is attached to the Consumer Advocate's *Motion for Reconsideration*, filed (Jan.23, 2009).

4 Staff Comments of the Virginia State Corporation Commission, Case No. PUC-2008-00046, p. 10 (issued October 24, 2008) attached to Embarq's Post-Hearing Brief filed October 31, 2008.

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on the party below via facsimile, U.S. Mail, hand delivery, commercial delivery, or e-mail, on the 5 day of March 2009.

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