

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:	April 7, 2009)	
)	
UNITED TELEPHONE-SOUTHEAST, INC.)	DOCKET NO.
D/B/A EMBARQ CORPORATION TARIFF FILING)	07-00269
TO INCREASE RATES IN CONJUNCTION)	
WITH THE APPROVED 2007 ANNUAL PRICE)	
REGULATION FILING)	

ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO STRIKE

This matter came before Chairman Eddie Roberson, Director Sara Kyle, and Director Mary W. Freeman of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this Docket, at a regularly scheduled Authority Conference held on March 9, 2009. The panel considered the merits of *The Consumer Advocate’s Motion to Reconsider the Majority’s Decision Regarding a One Call Policy for Embarq* (“*Motion to Reconsider*”) filed on January 23, 2009 and the *Motion to Strike* filed on February 24, 2009 by the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”).

BACKGROUND

On January 8, 2009, the Authority issued its *Order Approving Directory Assistance Tariff* in this docket. The Authority Order reflected the decision of the majority of the panel to approve the Tariff of Embarq, reducing the Directory Assistance call allowances from three free calls per month to one free call per month. The Consumer Advocate filed its *Motion to Reconsider* specifically seeking reconsideration of the majority’s decision relative to a one call allowance for directory assistance (“D.A.”) for United Telephone Southeast LLC d/b/a Embarq (“Embarq” or the “Company”).

On January 30, 2009, Embarq filed its *Response of United Telephone Southeast LLC d/b/a Embarq in Opposition to the Consumer Advocate's Motion for Reconsideration* ("Response"). On February 12, 2009, the Hearing Officer procedurally granted the motion for reconsideration and stated that the merits of the motion would be determined by the panel at a later date. Thereafter, the Consumer Advocate filed a *Motion to Strike* the filing of portions of the *Response* filed by Embarq in this docket.

POSITION OF THE PARTIES

Consumer Advocate: The Consumer Advocate seeks reconsideration of whether the decision made on December 15, 2008 by the majority of the panel that a one call allowance policy for Embarq is sufficient to serve the public interest. In its *Motion to Reconsider*, the Consumer Advocate argues that portions of the Company's presentation in this docket included representations that the Virginia Telecommunications Industry Association's ("VTIA") efforts to eliminate free D.A. call allowances were relevant to this proceeding. The Consumer Advocate states that on December 23, 2008, the Virginia Corporation Commission ("Virginia Commission") issued an Order concluding the matter and denying the request of VTIA to eliminate the free call allowance.¹ Rather than eliminate the call allowance, the Virginia Commission lowered the call allowance from three calls to two calls per month. The Consumer Advocate stated that the rationale used by the Virginia Commission for maintaining a minimum two call allowance is the concern that without a free call allowance consumers would be required to pay to obtain telephone numbers that are neither available in printed directories nor from other alternatives to D.A. service. The Consumer Advocate argues that the Virginia Commission's rationale is similar to the rationale relied upon by the Panel in Docket No. 97-01423 in creating D.A. call allowances and should be taken into consideration in this docket.

Additionally, the Consumer Advocate continues to argue that access to free directory assistance alternatives is not available to all Tennesseans. Lastly, the Consumer Advocate argues that Embarq's provides D.A. call allowances in half of the other states where it provides telephone

¹ *Motion to Reconsider*, p. 2.

service. The Consumer Advocate stated that in some states Embarq has not been mandated to provide free D.A. call allowances, however, Embarq provides call allowances.

Embarq: Embarq argues that the bulk of the concerns stated by the Consumer Advocate in its *Motion for Reconsideration* concern matters that have been litigated in this docket, and Embarq states that no further response is necessary.² However, Embarq stated that it will respond to the Consumer Advocate's portrayal of the Virginia Commission's "Final Order" dated December 23, 2008. Embarq states that VTIA filed an application requesting elimination of all local directory assistance calling allowances, but the Virginia Commission granted a reduction from three to two call allowances per month for directory assistance. Embarq states that there is only a single sentence in the Commission Staff report upon which the Virginia Commission rested its decision not to eliminate or allow a greater reduction in local directory assistance relating to telephone numbers that are not available in either a printed directory or an alternative D.A. source. Therefore, Embarq believes that any concern of the decision made by the Virginia Commission is unfounded. Embarq further stated that it does not control alternative providers of local directory assistance, however, Embarq does provide real time access to its directory updates. Further, Embarq stated that it updates local directory listings and provides these updates to compilers of national lists on a daily basis. Also, Embarq states that it provided evidence of numerous alternative providers of local directory assistance in support of the decision by the majority to reduce the free directory assistance call allowance from three to one per month.³

MOTION TO STRIKE

In its *Motion to Strike*, the Consumer Advocate seeks to strike from the record pages two and three of Embarq's *Response* to the *Motion for Reconsideration*. In so doing, the Consumer Advocate claims that 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. The Consumer Advocate maintains

² *Response*, p.1.

³ *Id.* at 3.

that Embarq had ample opportunity during a year-long proceeding to do so. Further, the Consumer Advocate states that Embarq cannot second guess or attack the final outcome of the Virginia directory assistance proceeding when it relied upon filings in that proceeding in support of its position in this docket.⁴ The Consumer Advocate argues that Embarq seeks to introduce new positions into this docket by claiming that the Company provides updates of local directory listings to “national providers” of directory assistance and that updates do not hinder the availability of accurate information to alternative D.A. providers such as those on the Internet. The Consumer Advocate states that the new claim is made without having been subject to discovery and cross-examination. The Consumer Advocate claims that it raised the issue of accuracy of listing information provided in directory assistance alternatives in Michael Chrysler’s filed testimony, and Embarq failed to respond to this issue in pre-filed rebuttal testimony or live testimony at the hearing.

FINDINGS AND CONCLUSIONS

The panel considered the merits of the *Motion for Reconsideration* and the *Motion to Strike* at its regularly scheduled Authority Conference held on March 9, 2009. First, the panel noted that the Consumer Advocate was seeking reconsideration only on the portion of the majority’s decision that a one directory assistance call allowance policy for Embarq is sufficient to serve the public interest; the Consumer Advocate did not ask for reconsideration of other aspects of the January 8, 2009 Order.

After considering the Consumer Advocate’s arguments and Embarq’s response, a majority of the panel⁵ found that it was unconvinced that the majority’s original decision was erroneous or unfounded. Therefore, the majority of the panel voted to deny the *Motion for Reconsideration*. Regarding the Consumer Advocate’s *Motion to Strike*, a majority of the panel found that the

⁴ *Motion to Strike*, p. 1.

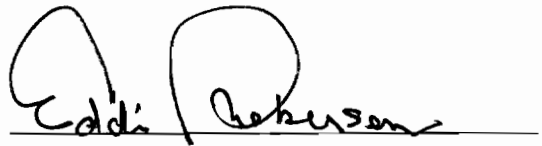
⁵ Director Kyle re-affirmed her opinion on this matter as set out in Footnote 13 in the January 8, 2009 Order. Director Kyle offered a separate motion to grant the Consumer Advocate’s *Motion for Reconsideration*.

arguments raised by Embarq were responses to the arguments raised in the Consumer Advocate's *Motion for Reconsideration*. Therefore, a majority of the panel voted to deny the *Motion to Strike*.

IT IS THEREFORE ORDERED THAT:

1. *The Consumer Advocate's Motion to Reconsider the Majority's Decision Regarding a One Call Policy for Embarq* is denied on the merits.

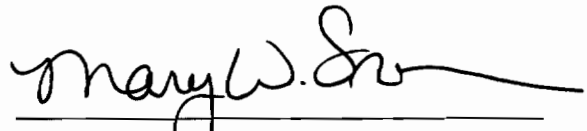
2. The Consumer Advocate and Protection Division of the Office of the Attorney General's *Motion to Strike* is denied.

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Eddie Roberson, Chairman

* * *

Sara Kyle, Director

A handwritten signature in black ink, appearing to read "Mary W. Freeman", written over a horizontal line.

Mary W. Freeman, Director