

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 5, 2008

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

**DISSENT OF DIRECTOR RON JONES TO THE
*ORDER GRANTING TARIFF IN PART AND SUSPENDING TARIFF IN PART***

The above-styled docket came before a panel of the Tennessee Regulatory Authority during an Authority Conference held on December 17, 2007. At the conference, a majority of the panel voted to suspend the provision of Tariff No. 07-456 filed by United Telephone Southeast, Inc. d/b/a Embarq Corporation ("Embarq") raising the rate for directory assistance from \$0.50 to \$0.95 per call. I dissented from this conclusion and offer this opinion in support of my vote.¹

I. RELEVANT PROCEDURAL HISTORY

On November 19, 2007, the Authority's Utilities Division received a tariff filing from Embarq with an effective date of December 19, 2007. The tariff increases rates for multiple services, including directory assistance, and reduces the directory assistance call allowances

¹ As is reflected by my signature to the *Order Granting Tariff in Part and Suspending Tariff in Part*, I agreed with the prevailing motion in regard to: (1) approving Tariff No. 07-456 with the exception of the directory assistance call allowance provision, (2) suspending the reduction of directory assistance call allowances, (3) convening a contested case, (4) granting the *Complaint and Petition to Intervene* filed by the Consumer Advocate and Protection Division of the Office of the Attorney General, and (5) appointing a hearing officer.

from three to one. On December 11, 2007, the Consumer Advocate and Protection Division of the Office of the Attorney General (“Consumer Advocate”) filed a *Complaint and Petition to Intervene* objecting only to the provision of the tariff reducing the directory assistance call allowances from three to one.² Embarq filed the *Response of United Telephone-Southeast, Inc. d/b/a Embarq to the Consumer Advocate and Protection Division’s Complaint and Petition to Intervene* on December 14, 2007.

II. DISCUSSION

For some time now, I have voted in favor of convening a contested case to consider the reduction of directory assistance call allowances,³ but have not voted in favor of denying or suspending a directory assistance rate increase.⁴ I have not voted in favor of holding up a price-regulated company’s request to increase its directory assistance rate where the company had sufficient headroom under its Authority approved price regulation plan, because there has not

² In the *Complaint and Petition to Intervene*, the Consumer Advocate specifically notes that it “has no objection to the other provisions of the proposed tariff unrelated to the allotment of free directory assistance calls.” *Complaint and Petition to Intervene*, p. 3 (Dec. 11, 2007).

³ See *In re: Tariff Filing by BellSouth Telecommunications, Inc. to Reduce the Number of Call Allowances for Directory Assistance and to Extend Exemptions to Directory Assistance Call Completion Service – Tariff No. 2004-1434*, Docket No. 04-00416, *Concurrence and Dissent of Director Ron Jones to the Order Declining to Convene Contested Case as to BellSouth Tariff No. 2004-1434 and Denying Consumer Advocate’s Complaint and Petition to Intervene* (Sept. 2, 2005) (addressing a BellSouth tariff reducing the number of call allowances from six to three); *In re: Tariff Filing by BellSouth Telecommunications, Inc. to Increase Directory Assistance and Operator Service Rates – Tariff Number 2006-00431*, Docket No. 06-00232, *Order Granting BellSouth Tariff No. 2006-00431*, p. 7 n.7 (Apr. 17, 2007) (addressing a BellSouth tariff reducing the number of call allowances from three to one); *In re: Tariff of Filing by AT&T Tennessee to Increase Rate for Directory Assistance (DA) and Eliminate the Monthly DA Call Allowance*, Docket No. 07-00188, *Order Approving Tariff in Part and Suspending Tariff in Part for Ninety (90) Days, Convening a Contested Case Proceeding and Appointing a Hearing Officer* (Dec. 18, 2007) (addressing a BellSouth tariff that eliminates call allowances); *In re: Tariff Filing by United Telephone-Southeast, d/b/a Embarq, to Increase Residential and Private Line Rates, Increase Late Payment Charges and Decrease the Number of Call Allowances for Directory Assistance from Six (6) to Three (3) – Tariff Number 2006-0530*, Docket No. 06-00288, *Order Approving Tariff*, p. 6 n.8 (Nov. 21, 2007) (addressing an Embarq tariff reducing the number of call allowances from six to three).

⁴ *In re: Tariff Filing by BellSouth Telecommunications, Inc. to Increase Directory Assistance and Operator Service Rates – Tariff Number 2006-00431*, Docket No. 06-00232, *Order Granting BellSouth Tariff No. 2006-00431*, p. 7 n.7 (Apr. 17, 2007) (addressing a BellSouth tariff increasing the directory assistance rate from \$0.98 to \$1.14); *In re: Tariff of Filing by AT&T Tennessee to Increase Rate for Directory Assistance (DA) and Eliminate the Monthly DA Call Allowance*, Docket No. 07-00188, *Order Approving Tariff in Part and Suspending Tariff in Part for Ninety (90) Days, Convening a Contested Case Proceeding and Appointing a Hearing Officer*, p. 4 (Dec. 18, 2007) (addressing a BellSouth tariff increasing the rate from \$1.14 to \$1.35).

been any justification, in my opinion, for doing so. As in the past, there is no justification in this record for suspending Embarq's request to increase its directory assistance rate from \$0.50 to \$0.95 per call.⁵

The Authority may suspend the tariff of an incumbent local exchange carrier on its own motion "upon finding such suspension to be in the public interest."⁶ This is a very broad standard that affords the Authority vast discretion, yet it is not without limitations. In my opinion, the critical limitation is that there must be a conclusion that suspension is in the public interest and underlying support for that conclusion. In other words, simply stating or implying the conclusion that suspension is in the public interest is insufficient – there must be more. During the deliberations at the December 17, 2007, Authority Conference, I failed to hear an explicit conclusion that suspension is in the public interest or grounds supporting such a conclusion. Moreover, I was unable to infer from the comments offered in support of the prevailing motion the conclusion that suspension is in the public interest or the basis for such a conclusion.⁷ However, this lack of specificity alone did not drive my vote in opposition to suspending the directory assistance rate increase. Instead, it is my determination that a suspension is not justified in this case.

Whether an action is in the public interest depends in large part on the facts underlying the suggested action. For example, when considering whether to grant a transfer of control pursuant to Tennessee Code Annotated section 65-4-113, I concluded that "an action is in the

⁵ It is interesting to note here that the rate proposed by Embarq is significantly less than the rate approved by the Authority for another price-regulated carrier. Specifically, the current rate charged by BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee for its comparable service is \$1.35. *In re: Tariff Filing by AT&T Tennessee to Increase Rates for Directory Assistance (DA) and Eliminate the Monthly DA Call Allowance*, Docket No. 07-00188, *Order Approving Tariff in Part and Suspending Tariff in Part for Ninety (90) Days, Convening a Contested Case Proceeding and Appointing a Hearing Officer*, p. 4 (Dec. 18, 2007).

⁶ Tenn. Code Ann. § 65-5-101(c)(3)(C)(iii) (Supp. 2006).

⁷ It is worth noting here that the *Order Granting Tariff in Part and Suspending Tariff in Part* does not contain a discussion of the public interest with regard to suspending the directory assistance rate increase.

public interest for the purposes of telecommunications in Tennessee if the action at a minimum permits competition, protects consumer interests, and does not unreasonably disadvantage any telecommunications service providers.”⁸ In the context of a tariff, the public interest considerations are more numerous. Certainly, it would be in the public interest to suspend a tariff suspected to be contrary to Tennessee’s telecommunications services policy as set forth in Tennessee Code Annotated section 65-4-123. Similarly, it would be in the public interest to suspend a tariff that appeared to result in unjust discrimination or an unjust or undue preference in contravention of Tennessee Code Annotated section 65-4-122. It would also be in the public interest to suspend a tariff that appears to be inconsistent with a company’s price regulation plan. Finally, suspension would be in the public interest if the tariff language is vague or ambiguous or further understanding of the service offering is needed before the Authority can complete its review of the tariff. This list of examples, while not intended to be exhaustive, provides a reasonable indication of what I identify to constitute a reasonable basis for concluding that suspension is in the public interest. Summarily, it can be said that at a minimum the action of suspending a tariff is in the public interest if there is a question as to whether the tariff violates a statute or rule, if the language of the tariff is vague or ambiguous, or if the Authority requires further information before completing its assessment of the tariff.


As to the case before us, I am unable to conclude that suspension is in the public interest. No issue has been raised nor am I aware of any issue of whether the tariff provision increasing the rate for directory assistance violates a provision of state or federal law, including the restrictions applicable to price-regulated companies and the prohibitions against unjust

⁸ See *In re: Joint Filing of AT&T, Inc. and BellSouth Corporation together with its Certificated Tennessee Subsidiaries Regarding Change of Control of the Operating Authority of BellSouth Corporation’s Tennessee Subsidiaries*, Docket No. 06-00093, *Dissenting Opinion of Director Ron Jones*, pp. 3-4 (Nov. 29, 2007) (relying on the declaration of the telecommunications services policy in Tennessee Code Annotated section 65-4-123).

discrimination and undue preferences. The tariff provision is neither vague nor ambiguous. Lastly, I am in need of no further information before reaching a conclusion as to the issue of whether the directory assistance rate increase should be approved. As I mentioned during the December 17th conference, I have to ask myself how I would act on this tariff if it were filed without the directory assistance call allowance reduction. In that instance, I would be in favor of allowing the tariff to go into effect. In my opinion, the addition of the call allowance reduction does not change this conclusion. While the rate increase may prove to be of particular interest when reviewing the appropriateness of the directory assistance call allowance reduction, I cannot say that the opposite is true. That is, the directory assistance call allowance reduction is of no consequence as to my decision to allow the directory assistance rate increase to go into effect.

III. CONCLUSION

For the foregoing stated reasons, it is my opinion that the majority erred when it suspended the rate increase for directory assistance calls. Therefore, I dissent from the *Order Granting Tariff in Part and Suspending Tariff in Part* in this regard.



Ron Jones, Director