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May 28, 2008

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VIA HAND DELIVERY

Hon. Eddie Roberson, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc. dba AT&T Tennessee Tariff to
Increase Per Call Rate for Directory Assistance*
Docket No. 08-00076

Dear Chairman Roberson:

Enclosed are the original and four copies of AT&T Tennessee's *Opposition to
Consumer Advocate's Petition to Convene a Contested Case Regarding Issues
Unrelated to Approved Directory Assistance Tariff*.

Copies of the enclosed are being provided to the Consumer Advocate.

Very truly yours,

A large, stylized handwritten signature in black ink, appearing to be "Guy M. Hicks".

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee
Tariff to Increase Per Call Rate for Directory Assistance*

Docket No. 08-00076

**AT&T TENNESSEE'S OPPOSITION TO
CONSUMER ADVOCATE'S PETITION TO CONVENE
A CONTESTED CASE REGARDING ISSUES UNRELATED
TO APPROVED DIRECTORY ASSISTANCE TARIFF**

AT&T Tennessee files this response opposing the Consumer Advocate's request to convene a contested case in this docket. In its Petition, the Consumer Advocate did not attempt to satisfy the requirements of T.C.A. § 65-5-101(c) to suspend AT&T's tariff in this docket, and the TRA has now approved that tariff. For all of the reasons discussed below, convening a contested case in a tariff docket, after the tariff is approved, in order to consider issues unrelated to the terms of the approved tariff, would be procedurally improper, a waste of administrative resources, and would stand in stark contrast to the General Assembly's efforts to streamline the administrative processes regarding tariffing of those services that remain regulated by the TRA.

I. Convening a Contested Case in this Docket Is Procedurally Improper.

The filing of a tariff does not constitute a contested case as a matter of TRA Rule, and the TRA's rules require timely filing of a request to

convene a contested case relating to a tariff. Specifically, TRA Rule 1220-1-2-.02 (4) provides:

(4) A tariff filing does not constitute a contested case; however, any interested person may object to the tariff filing by filing a complaint. Any such complaint shall state the nature of the interest, the grounds for any such objection and the relief sought. A copy of the complaint shall be served on the company filing the tariff. The company filing the tariff shall have the right to respond to such complaint. It shall be within the discretion of the Authority to convene a contested case. A complaint opposing the tariff shall be filed no later than seven (7) days prior to the Authority Conference immediately preceding the proposed effective date of the tariff.

The Consumer Advocate's Petition was not filed seven days prior to the Authority's conference as required by the rule. Instead the petition was filed and served on the very day of the conference.

In addition to the failure of the petition to conform to the TRA rule, the petition also did not set forth any of the required statutory elements for a complaining party to obtain a tariff suspension pending a contested case, as set forth in T.C.A. § 65-5-101. In order to suspend a tariff to convene a contested case, a complaining party must demonstrate a substantial likelihood that it can prove the tariff to be illegal, as well as other factors not met in this case. The TRA has already approved the tariff in this case, conclusively demonstrating that the tariff is in fact legal.

Rather than convening a contested case for the purpose of testing the legality of the (already approved) tariff, the Consumer Advocate urges the TRA to convene a contested case to "examine and evaluate AT&T's

directory assistance policy.” CAD Petition at 2. The Consumer Advocate provides no legal citation for TRA authority to convene contested cases to “evaluate policy.” In fact, the TRA’s powers relating to promulgation of policy are properly undertaken in rule-making formats not in contested cases.¹

II. Convening a Contested Case in this Docket Would Waste Administrative Resources

The Consumer Advocate fails to explain what purpose would be served by expending TRA resources opening a *third* simultaneous docket relating to directory assistance call allowances. Two different TRA panels are currently acting in two separate contested cases, Dockets 08-00021 and 07-00269, regarding the precise issue the Consumer Advocate appears to raise here. Presumably, any argument or evidence the Consumer Advocate wishes to advance in relation to that issue could be presented in one of these two

¹ As the TRA has recognized, the power to promulgate policy is not unlimited. The Court of Appeals' *Tennessee Cable Television Association v. Tennessee Public Service Commission*, 844 S.W.2d 151,160-162 (Tenn. Ct. App, 1992) decision addressed the proper procedural vehicle for promulgation of policy. In that case, the Court of Appeals declared that rulemaking is the preferable way to formulate new policies, rules, or standards and adopted the Supreme Court of New Jersey's *Metromedia* test for determining whether an agency's actions should be undertaken in the form of a rulemaking. Under the *Metromedia* test, an agency determination should take the form of a rulemaking if it appears, in many or most of the following circumstances, that the agency determination (1) is intended to have wide coverage encompassing a large segment of the regulated or general public, rather than an individual or a narrow select group; (2) is intended to be applied generally and uniformly to all similarly situated persons; (3) is designed to operate only in future cases, that is prospectively; (4) prescribes a legal standard or directive that is not otherwise expressly provided by or clearly and obviously inferable from the enabling statutory authorization; (5) reflects an administrative policy that (i) was not previously expressed in any official and explicit agency determination, adjudication or rule, or (ii) constitutes a material significant change from a clear, past agency position on the identical subject matter; and (6) reflects a decision on administrative regulatory policy in the nature of the interpretation of law or general policy.

dockets. It is hard to understand what interest would be served by opening a third docket.

III. Convening a Contested Case in the Docket Would Be Inconsistent with Legislative Goals.

Finally, the Consumer Advocate's request to engage in a regulatory docket regarding AT&T's approved directory assistance tariff is particularly difficult to square with the General Assembly's policy goals of streamlining and limiting the regulatory delays that impact communications businesses. The General Assembly, in recognition of the changing competitive landscape, has consistently moved toward limiting the role of regulation. The communications market is now, more than ever, an inter-modal market. Customers select functionally equivalent services from providers that are not regulated by the TRA, and those providers would not be subject to any "policy" adopted by the TRA on directory assistance in this docket.

The General Assembly's recognition of the need for reduced regulation is clear in its deregulation of bundles (T.C.A. § 65-37-103), its streamlining of the tariff filing process (T.C.A. § 65-5-101(c)), its reduction in state-specific financial reporting (T.C.A. § 65-37-104), its deregulation of business contracts (T.C.A. § 65-5-101(b)), and its opening of the video marketplace.

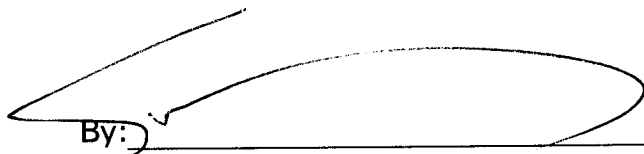
The Consumer Advocate's request to insert the TRA into the "directory assistance policy" of a price-regulated carrier with an approved tariff (a tariff that does not impact call allowances) is simply out of step with

the General Assembly's consistent work to deregulate the communications industry.

For all of the foregoing reasons, this docket should be closed.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
d/b/a AT&T TENNESSEE



By: _____

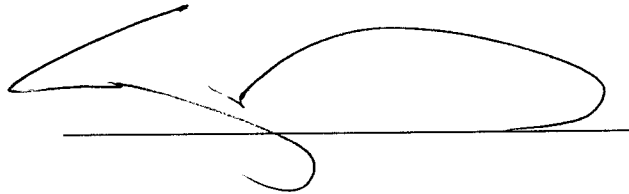
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CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2008, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Ryan L. McGehee, Esquire
Office of the Attorney General
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A handwritten signature in black ink, appearing to read 'Ryan L. McGehee', is written over a horizontal line.