

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

<b>IN RE: AT&amp;T OF THE SOUTH CENTRAL</b>	)	
<b>STATES, LLC'S TARIFF TO INCREASE</b>	)	
<b>DIRECTORY ASSISTANCE RATES</b>	)	<b>DOCKET NO. 08-00076</b>
	)	
	)	

---

**INITIAL BRIEF IN SUPPORT OF THE CAPD'S MOTION TO RECONSIDER THE  
HEARING PANEL'S ORDER OF JULY 14, 2008**

---

Pursuant to the *Order Granting Consumer Advocate's Motion to Reconsider* of August 18, 2008, the Attorney General and Reporter for the State of Tennessee, through the Consumer Advocate and Protection Division of the Office of Attorney General (hereinafter "Consumer Advocate"), respectfully submits this Initial Brief.<sup>1</sup> For purposes of this brief, the Consumer Advocate incorporates the statements and positions made in the Consumer Advocate's *Motion for Reconsider the Hearing Panel's Order of July 14, 2008* filed July 29, 2008. (A copy, minus attachments, is attached for convenience at Attachment A).

**I. Brief Overview of Regulatory Treatment of Directory Assistance**

At one time local directory assistance ("D.A.") was a "free" service provided by traditional incumbent telephone companies, such as BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T"), for which there was no charge for specific uses. Indeed, for consumers of

---

<sup>1</sup> The Order required Initial Briefs on September 5, 2008, however the Consumer Advocate requested an extension until September 9, 2008, with agreement from opposing counsel, on September 4, 2008.

many incumbent rate of return telephone companies today in this state, D.A. remains a free service.<sup>2</sup> Prior to 1997 and 1999 respectively, United Telephone Southeast, LLC d/b/a Embarq Corporation (“Embarq”) and AT&T did not charge for D.A. service. In 1997, a majority of directors determined that under price cap regulation, D.A. is a non-basic service as defined by statute under price cap regulation.<sup>3</sup> Thus, a price cap regulated carrier, such as AT&T, is entitled to set the rate for D.A. that it deems appropriate so long as price cap regulations are adhered to.<sup>4</sup>

However, while price cap regulated carriers are entitled to set rates for non-basic services, subject to price cap regulation, the TRA retained the power to set appropriate safeguards to protect consumers.<sup>5</sup> In Docket 96-01423, which concerned Embarq, the TRA mandated a free six call monthly allowance for all consumers, an exemption from all D.A. charges for those 65 and older, and an exemption for those with disabilities. The Court of Appeals affirmed the TRA’s actions in creating a call allowance and exemptions for those 65 and older and those with disabilities. *Consumer Advocate v. Tennessee Regulatory Authority*, 2002 WL 1579700\*7 (Tenn.Ct.App.2002). (copy at Attachment B).

In Docket 99-00391, AT&T voluntarily adopted the regulatory requirements for six free calls

---

<sup>2</sup> While there may be no charge for the use of D.A. for rate of return incumbents, the cost of providing the service is incorporated into rates. In addition, some incumbents charge for D.A. when they do not or cannot self-provision the service and rely on other parties to provide it.

<sup>3</sup> Docket 96-01423, *Order Approving in Part and Denying in Part Tariff No. 96-201* (September 4, 1997). Director Kyle dissented from the majority conclusion that directory assistance was a non-basic service.

<sup>4</sup> This majority’s conclusion that D.A. is a non-basic service under the price cap regulation statute was affirmed by the Court of Appeals. *Consumer Advocate v. Tennessee Regulatory Authority*, 2002 WL 1579700 (Tenn.Ct.App.2002). A copy of the opinion was attached for convenience to the Consumer Advocate’s *Petition to Intervene* filed in this docket on May 19, 2008.

<sup>5</sup> Docket 96-01423, *Order Approving in Part and Denying in Part Tariff No. 96-201* (September 4, 1997), p. 16.

and the exemptions that were mandated in Docket 96-01423.<sup>6</sup> Previously, AT&T had not charged for D.A. calls. However, since Docket 99-00391, the call allowance provided to consumers has been reduced while the rates have greatly increased. In Docket 04-00416, AT&T was allowed to lower the call allowance from six calls to three.<sup>7</sup> In Docket 06-00232, the company was again allowed to reduce the call allowance from three calls to one. In doing so the Authority concluded that the evolving dynamics of the communications industry provides many alternate venues for consumers to obtain phone numbers such as internet search engines and cell phones.<sup>8</sup> In essence, because alternatives exists from which consumers may find obtain phone numbers, AT&T's call allowance has been allowed to be reduced.

## **II. The Consumer Advocate's Position in This Docket**

The Consumer Advocate seeks the opportunity to raise the call allowance due to growing rate increases and other relevant factors. As it currently stands, the vast majority of Tennessee's wireline telecommunications consumers are paying more for a service today that was traditionally free while the D.A. call allowance intended as a safeguard for consumers has been reduced to one call. While the call allowance has eroded, rates have gone up, increasing the burden on consumers to pay for a service that was formerly "free" with the cost of service already incorporated into the basic local exchange rates.

---

<sup>6</sup> Docket 99-00391, *Order Approving Tariff and Denying the Consumer Advocate's Petition*, (July 29, 1999).

<sup>7</sup> In Docket 04-00416, the Consumer Advocate's Complaint and Petition to Intervene was denied by a majority of directors.

<sup>8</sup> Docket 06-00232, *Order Granting BellSouth Tariff No. 2006-00431*, (April 17, 2007) p. 5.

In addition, although alternatives to traditional D.A. exist, not all Tennesseans have ready access to such alternatives according to recently developed survey data from a knowledgeable source. The Authority should consider these facts in proceeding to a contested case and in the ultimate decision on the merits. In addition, the Authority should take this opportunity to examine the efforts of the company to promote the existence of the exemptions for those age 65 and over and those with disabilities. Thus, the Authority should convene a contested case, permit discovery and consider the evidence and positions of the parties in evaluating AT&T's tariff.

### **III. Alternatives to D.A. Service Are Not Available to All Tennesseans**

While the Consumer Advocate does not dispute that alternatives exist from which consumers may obtain commercial and residential phone listings, it cannot be taken for granted that consumers have ready access to such alternatives.<sup>9</sup> Internet search engines are a viable tool for searching for listings. However, access to the internet requires a computer and internet subscriber status. Recent survey data conducted by Connected Tennessee, a non-profit organization that develops and implements strategies for technology deployment, illustrates that not all Tennesseans have access to the internet or own a computer. The 2007 Technology Assessment of Tennessee Residential Consumers confirms what many believe in that a digital divide remains in this state.<sup>10</sup> The survey data a correlation in terms of access to technology (*i.e.*, computer ownership and internet subscriber

---

<sup>9</sup> Other alternatives include wireless 411, which is not free and 1-800 D.A. style services which are not well known or advertised.

<sup>10</sup> See attached excerpts in Attachment "C" of the 2007 Technology Assessment of Tennessee Residential Consumers. A full copy can be found on Connected Tennessee's website and also attached to Mike Chrysler's direct testimony at MDC-1 filed in Docket 07-00269 on July 1, 2008. Mr. Chrysler discusses the Connected Tennessee data and the correlation between access to technology and income in his testimony.

status) and the level of a household's income.<sup>11</sup>

The lower the income, the less likely one is to own a computer or have an internet connection at home. There is a similar correlation between the level of education obtained and computer ownership and internet subscriber status.<sup>12</sup> The less education one has the less likely that have access to such technology. There is also data indicating a disparity in terms of race as it pertains to internet access and computer ownership.<sup>13</sup> As there is no dispute that alternatives exists, the question before the Authority is whether the ability for consumers to have access to alternatives is a relevant factor in setting a call allowance. It is those less fortunate households, particularly those with under \$24,999 in annual income, that are impacted by higher D.A. rates and lower call allowances than others.

AT&T serves Tennesseans in more than 60 of the 95 counties in the state. The company, which can be ably described as the dominant telecommunications provider in Tennessee, serves the bulk of the state. AT&T's service territory covers the spectrum of rural, suburban and urban areas of the state. Thus, AT&T encompasses all manner of demographics, including low-income levels and poverty rates both in rural areas and urban centers. Poverty rates in AT&T served counties run the range from 8.4% in Knox County to 19.9% in Lake County.<sup>14</sup> Thus, the state-wide impact is much greater than those proposals being considered in Docket 07-00269 in regards to Embarq and

---

<sup>11</sup> *Id.*, 104, 107.

<sup>12</sup> *Id.*, 86, 88.

<sup>13</sup> *Id.*, 124, 126.

<sup>14</sup> See Attachment (D) For median income levels, poverty rates and the number of senior citizen from six AT&T counties: "Urban" vs. "Rural". At this time, the Consumer Advocate has only examined data from these six counties.

Docket 08-00021 in regards to Citizens Telecommunications Company of Tennessee, LLS d/b/a Frontier Communications of Tennessee (“Frontier”).

#### **IV. The Rate Increase Approved in this Docket Impacts the Appropriate Number of D.A. Call Allowances Required to Serve the Public Interest**

There is a relationship between the rates being charged for D.A. and the appropriate number of free calls required to serve consumers. The rate charged by AT&T for directory assistance is relevant and impacts the number and value of allowed call allowances which are required to serve the public interest. The Consumer Advocate submits that the TRA may raise the D.A. call allowance in relation to the rate charged by AT&T along with other factors.<sup>15</sup> In balancing the interest of consumers and the interest of AT&T, the TRA should take into account the ever increasing rates consumers must pay to use D.A., a service that was formerly considered free.

Since 1999, AT&T’s rate for D.A. has risen from \$0.29 to the current \$1.50 while the call allowance required by the Authority has declined from six calls to one. In an era in which advances in technology have lead to the cost of service for most traditional telephone services to decline, consumers are paying more for traditional services. For illustrative purposes, between 1987 and 1994, prior to price cap regulation, the cost of providing telephone service for AT&T had declined to the extent that the former Tennessee Public Service Commission had reduced AT&T’s earnings by an average of \$29.1 million per year. Beginning in 1995, price cap regulation was instituted. Under price cap regulation, AT&T has discretion to set rates without regard to the cost of service as part of an effort to foster competition. Yet, the competitive market has not prevented tariffed

---

<sup>15</sup> See p. 5 and footnote 7 of Attachment A pertaining to the Authority’s recognition of that the rate charged for D.A. may be relevant to the number of call allowances required to serve the public interest.

rates from going up.

In balancing the interests of consumers and the interests of AT&T, the TRA must consider the rising rates charged by AT&T while the costs of traditional services are declining due to technological advances. Such action is in line with the mission of the agency, Tennessee's Telecommunications Policy in Tenn. Code Ann. § 65-4-123 in maintaining affordable rates for essential telecommunications services and the "just and reasonable" standard expressly provided in Tenn.Code Ann. § 65-4-117(3).

#### **V. Efforts to Promote the Existence of the Senior Citizen and Disabled Exemptions to the Public Must Be Examined**

A key element of AT&T's D.A. tariff is that it provides an exemption from D.A. charges for those with disabilities and those age 65 and over. The importance of this public benefit has been recognized consistently by both the Authority and AT&T. The company has argued that the exemptions for seniors and those with disabilities are sufficient enough of a public benefit for the TRA to decline to convene a contested case on these issues.<sup>16</sup> In granting reductions to the D.A. call allowance, TRA orders refer to the continued existence of the exemptions for seniors and the disabled as a continuing public benefit. However, the nature of the exemptions require those that qualify to apply to the company. Before one can qualify for this important public benefit, one has to know that it exists. Thus, advertising and promotions of the exemptions are vital if the exemptions are to serve the public interest.

A public benefit is of little use if the public is unaware of its existence. This issue became

---

<sup>16</sup> Docket 07-00188, AT&T's Response to the CAPD, August 15, 2007 p.3.

a concern of the Consumer Advocate in Docket 07-00269 when information obtained from discovery indicated to the Consumer Advocate that not enough has been done to make the existence of the exemptions known to the Embarq's consumers.<sup>17</sup> The Consumer Advocate is concerned a similar problem may exist with respect to AT&T. If in fact AT&T's efforts to promote the existence of the exemptions to seniors and those with disabilities have been successful, such information would offer guidance and perhaps be instructive to both Embarq and Frontier.<sup>18</sup> However, neither the Authority nor the Consumer Advocate will be able to make an assessment until AT&T produces evidence as to the number of exemptions that have been granted and the promotion efforts the company has engaged in. This is a very important issue considering that many people with disabilities and/or age 65 and older must live on fixed incomes at a time when prices for essentials are climbing.

## **VI. The Authority's Power to Set D.A. Call Allowances & Exemptions**

At its heart, the existence of the call allowances and exemptions is a public policy decision aimed at serving the public interest. Public policy is not set in stone, but rather is subject to healthy debate, re-evaluation and modification so that the public interest may be better served. It cannot be reasonably disputed that the Authority has the power require AT&T to change its D.A. tariff to better serve the public interest. This discretion and statutory power may be exercised at anytime and is independent of the desires of the company. The position of the company that tariff # 2008159

---

<sup>17</sup> Docket 07-00269, Direct Testimony of Michael Chrysler (July 1, 2008). The confidential version contains specific details as to this issue.

<sup>18</sup> In Docket 08-00021, Frontier is introducing D.A. charges for the first time. At this time the company's proposed tariff does not provide an exemption for those age 65 and older.



merely raises rates and does not change the call allowance or exemptions is irrelevant. As briefed earlier, what is relevant is that the rate has increased yet again, while the call allowance has eroded over the years from six calls to one. The company's argument that it would be procedurally inappropriate to re-evaluate a tariff that is already in effect, such as the one call allowance granted in Docket 06-00232, is not supported by law or practice. Whether a tariff is being proposed or whether it has been effective for fifty years, the TRA may change it.

The initial decision in denying the Consumer Advocate's *Complaint and Petition to Intervene* in this docket on a basis of ripeness can only be interpreted as to suggest that AT&T's one call allowance and tariffed exemptions are set in stone until the day the company elects to file a tariff to eliminate the sole remaining call allowance or the exemptions. In other words, AT&T's D.A. policy will not be subject to Authority review, notwithstanding the complaint of another party, until the company determines to file a tariff to change the call allowance and/or exemptions.

It must be noted that even when AT&T has filed tariffs to reduce its call allowance in the past the Consumer Advocate has been denied the opportunity to propose changes to the tariff supported by a record.<sup>19</sup> The effect of ruling the claims of the Consumer Advocate as pre-mature or that the complaint is not yet ripe has the effect of the agency limiting its regulatory powers in that a tariff that is in effect will not be reviewed until a day of the company's choosing. Given the Authority's actions in convening a contested case in Docket 07-00188, when AT&T sought to end the one call allowance, it may be quite some time before the company attempts to modify the call

---

<sup>19</sup> In Docket 04-00416, the Consumer Advocate's *Complaint & Petition to Intervene* was denied while AT&T's reduction in call allowances and rate increase was granted. In Docket 07-00188, the Consumer Advocate's *Complaint & Petition to Intervene* was granted when AT&T increased its D.A. rates while seeking to eliminate the free call allowance. However, the docket was closed when AT&T withdrew the portion of the tariff eliminating the call allowance. The docket was closed the same day the tariff was withdrawn prior to discovery.

allowances.

It has been argued that a contested case in this docket will result in a regulatory delay that is out of step with the desires of the General Assembly. The Consumer Advocate would note that this matter would not delay any provision of a tariffed service or any rate increase. Indeed, the Consumer Advocate did not request a suspension of the rate increase although the TRA would have been well within its statutory authority to do so on its own motion. It must also be recognized that while the General Assembly has loosened the reins on price cap regulated carriers, it has by no means abolished the Authority's oversight powers and responsibilities. As recently as the last legislative session, the General Assembly only briefed considered and then shelved a legislative proposal that would have allowed, for all practical purposes, de-regulation.<sup>20</sup>

The prospect of raising AT&T's call allowance is far from a radical proposal. In neighboring North Carolina, AT&T provides three free calls per month.<sup>21</sup> In Virginia, Verizon Virginia Inc. / Verizon Virginia South, the dominant incumbent in that state, has been allowed to deregulate many telephone services, including D.A. calls. However, in deregulating D.A., the Virginia State Corporation Commission, that state's equivalent of the TRA, still requires a three D.A. call allowance per month.<sup>22</sup>

---

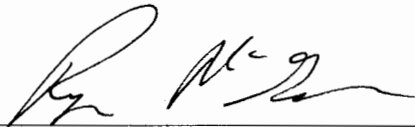
<sup>20</sup> HB 4180/ SB 4126

<sup>21</sup> See AT&T's D.A. tariff in effect in North Carolina as posted on AT&T's tariff webpage. Copy at Attachment E.

<sup>22</sup> Virginia State Corporation Commission, Case No. PUC-2007-00008, *Order on Application* (December 14, 2007), p. 55-56. Copy Attached at F).

WHEREFORE, the Consumer Advocate prays that the Tennessee Regulatory Authority reconsider the Order of July 14, 2008 and convene a contested case for the purpose of evaluating the issues in this matter so that the Consumer Advocate may propose changes to the D.A. tariff based upon a record.

RESPECTFULLY SUBMITTED,



Ryan L. McGehee, B.P.R. # 025559  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Consumer Advocate and Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207  
(615) 532-5512 (phone)  
(615) 532-2910 (facsimile)

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Complaint and Petition to Intervene was served on the party below via facsimile, U.S. Mail, hand delivery, commercial delivery, or e-mail, on the 9 day of September, 2008.

Guy M. Hicks, Esquire  
Joelle J. Phillips, Esquire  
AT&T of the South Central States, LLC  
333 Commerce Street, Suite 2101  
Nashville, Tennessee 37201-3300



Ryan L. McGehee  
Assistant Attorney General