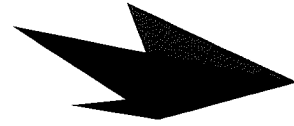


Voice | Data | Internet | Wireless | Entertainment



**EMBARQ®**

Embarq  
Mailstop: NCWKFR0313  
14111 Capital Boulevard  
Wake Forest, NC 27587-5900  
embarq.com

March 13, 2009

Chairman Eddie Roberson  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

filed electronically in docket office on 03/13/09

Re: Rulemaking to Establish a More Uniform Directory Assistance Policy for  
Telecommunications Carriers in Tennessee

Docket No. 09-00012

Dear Chairman Roberson:

Please find enclosed for filing in the above-referenced rulemaking docket the original and four (4) copies of the *Post-Workshop Comments* of United Telephone Southeast LLC d/b/a Embarq ("Embarq"). Embarq has already filed the enclosed response electronically and this letter is the required follow-up.

An extra copy of this letter and comments are enclosed. Please stamp those documents as "Filed" and return them to me in the enclosed self-addressed stamped envelope. Finally, please do not hesitate to contact me if you have any questions.

Sincerely yours,

Edward Phillips

HEP:sm

Enclosures

cc: Guy Hicks, Esquire (via e-mail)  
Ryan McGehee, Esquire (via e-mail)  
Karin Miller (via e-mail)

**Edward Phillips**  
COUNSEL  
Voice: (919) 554-7870  
Fax: (919) 554-7913  
edward.phillips@embarq.com

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

In Re:

Rulemaking to Establish a More Uniform  
Directory Assistance Policy for  
Telecommunications Carriers in Tennessee

)  
)  
)  
)  
)  
)  
)

Docket No. 09-00012

**POST-WORKSHOP COMMENTS OF  
UNITED TELEPHONE SOUTHEAST LLC d/b/a EMBARQ**

United Telephone Southeast LLC d/b/a Embarq (“Embarq”) hereby submits these Post-Workshop Comments so that it may follow-up on two matters raised in the Tennessee Regulatory Authority’s (“Authority”) workshop held on February 24, 2009.

First, Embarq continues to believe local directory assistance service is a highly competitive service given the evidence it presented in Docket No 07-00269, *In Re United Telephone-Southeast, Inc. d/b/a Embarq Tariff Filing to Increase Rates in Conjunction with the Approved 2007 Annual Price Cap Filing*. The numerous alternative providers offering local directory assistance service over diverse media cited in that docket demonstrate how “existing and potential competition is an effective regulator of the price” of the service. Tenn. Code Ann 65-5-108(b). This conclusion is reinforced by applying the “Evidentiary Criteria” contained in the *Order Establishing List of Issues and Setting A Procedural Schedule* put forth in Docket No. 08-00192, *In Re Petition of AT&T Tennessee for Regulatory Exemption Pursuant to T.C.A. 65-5-108(B) to Increase Regulatory Parity and Modernization*.<sup>1</sup>

---

<sup>1</sup> January 23, 2009 at Exhibit A, pp. 2-3. See **Attachment A** hereto. The docket was subsequently closed when AT&T Tennessee withdrew its petition.

In the workshop, Embarq emphasized evidence of alternative providers offering local directory assistance throughout its exchanges at comparable rates, terms and conditions. Embarq also emphasized evidence that it has sustained a loss of substantial market share (be it for queries billed or allowances/exemptions provided free of charge) in its local directory assistance service. These observations go directly to the first two items listed on the Evidentiary Criteria.

Second, in Docket No. 07-00269 the Consumer Advocate raised a question regarding what the Evidentiary Criteria might describe as “whether there are economic or regulatory barriers to entry preventing alternative providers from competing” and whether the alternative providers offer “functionally equivalent or substitutable services.”<sup>2</sup> Specifically, the Consumer Advocate cited the concerns raised by the Virginia State Corporation Commission about local numbers that are available through the incumbent local exchange carrier’s (“LEC’s”) local directory assistance service not being similarly available through alternative providers.<sup>3</sup>

As a supplement to the information Embarq has already submitted in response to the stated concern, Embarq also advises the Authority that the sharing of wholesale local directory listing information is governed by the Telecommunication Act of 1996, and no regulatory or economic barrier prevents alternative providers from access to current local directory assistance listings. Section 222(e) provides:

a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.<sup>4</sup>

In 2001, the Federal Communications Commission (“FCC”) extended the reach of the section by finding the “publishing of directories in any format” includes the publishing of telephone

---

<sup>2</sup> See Evidentiary Criteria No. 7, No. 1 and No. 5.


<sup>3</sup> See Embarq’s Opposition to the Consumer Advocate’s Motion for Reconsideration dated January 30, 2009.

<sup>4</sup> 47 USC §222(e).

directories on the Internet.<sup>5</sup> Alternative providers offering local directory assistance by voice are afforded the same non-discriminatory access to other local exchange carriers' local directory listings by Section 251(b).<sup>6</sup>

The highly competitive nature of the market for local directory assistance service, whether retail or wholesale, affords the Authority the opportunity for a light regulatory approach to local directory assistance services. Local directory assistance call allowances, excessive exemptions, and public information campaigns are not necessary when multiple alternative providers are offering local directory assistance services and doing so free of charge using diverse methods. If the Authority should determine that some regulation is necessary, then the Authority should impose the resulting requirements in a competitively neutral manner.

Respectfully submitted this 13<sup>th</sup> day of March, 2009.

  
\_\_\_\_\_  
Edward Phillips  
Attorney  
United Telephone Southeast LLC d/b/a/ Embarq  
Mailstop: NCWKFR0313  
14111 Capital Boulevard  
Wake Forest, North Carolina 27587-5900  
Telephone: 919-554-7870  
FAX: 919-554-7913  
Email: edward.phillips@embarq.com  
Tennessee B.P.R. No. 016850

---

<sup>5</sup> See *Provision of Directory Listing Information under the Telecommunications Act of 1996*, CC-Docket No. 99-273, First Report and Order, FCC 01-27, January 23, 2001 at ¶42. See the FCC Press Release at **Attachment B** hereto.

<sup>6</sup> *Id.* at ¶10-29. 47 U.S.C. §251(b)(3) provides that all local exchange carriers have “the duty to permit all such [competing] providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing....”

# **ATTACHMENT A**

## **TRA DOCKET NO. 08-00192**

### **LIST OF ISSUES**

#### **ISSUES:**

##### **I. Residential Services in Rate Groups 3, 4 and 5**

a. Whether existing or potential competition for all currently regulated residential services in AT&T's Rate Groups 3, 4 and 5 is an effective regulator of the price to justify exemption from any of the regulatory requirements contained in Tenn. Code Ann. Title 65, Chapter 5, Part I.

b. Whether it is in the public interest to exempt all currently regulated residential services in AT&T's Rate Groups 3, 4 and 5 from regulation.

c. What safeguards, if any, should the TRA adopt to ensure competition is sustainable and to further the public interest for all currently regulated residential services in AT&T's Rate Groups 3, 4 and 5 that may be deregulated?

##### **II. Business Services in Rate Groups 1, 2, 3, 4 and 5**

a. Whether the existing or potential competition for all currently regulated business services in AT&T's Rate Groups 1, 2, 3, 4 and 5 is an effective regulator of the price to justify exemption from any of the regulatory requirements contained in Tenn. Code Ann. Title 65, Chapter 5, Part I.

b. Whether it is in the public interest to exempt all currently regulated business services in AT&T's Rate Groups 1, 2, 3, 4 and 5 from regulation.

c. What safeguards, if any, should the TRA adopt to ensure competition is sustainable and to further the public interest for all currently regulated business services in AT&T's Rate Groups 1, 2, 3, 4 and 5 that may be deregulated?

### **EXHIBIT A**

### **III. Bundles and Promotion Offerings**

a. Whether the existing or potential competition for all bundles and promotional offerings is an effective regulator of price to justify exemption from any of the regulatory requirements contained in Tenn. Code Ann. Title 65, Chapter 5, Part I.

b. Whether it is in the public interest to exempt all bundles and promotional offerings from regulation.

c. What safeguards, if any, should the TRA adopt to ensure competition is sustainable and to further the public interest for all bundles and promotional offerings in AT&T's Rate Groups 3, 4 and 5 that may be deregulated?

### **IV. Policy/Public Interest**

a. Whether the public interest requires that the TRA require price studies to demonstrate that competition is being sustained.

b. Whether the public interest requires that the TRA revoke the competitive designation of any of AT&T's services should the TRA find anti-competitive behavior or predatory pricing.

c. Whether the public interest requires that the revoke or modify a competitive designation if evidence demonstrates that a service is no longer a competitive service.

### **EVIDENTIARY CRITERIA:**

The following criteria are provided to assist in the analysis of whether the competition demonstrated in "an effective regulator of the price of those services" for which AT&T is seeking regulatory exemption. In the analysis of what constitutes "an effective regulator" no single factor is determinative. The evidence of the following factors may establish sufficient proof to support an exemption for a service if such demonstrates that the existing or potential competition for that service can serve as "an effective regulator" of the price of that service.

1. Evidence of alternative providers, including intermodal, such as VoIP, wireless and cable competitors, who provide functionally equivalent or substitutable services throughout the exchanges in question at comparable rates, terms and conditions. Such evidence should include:

- a) the number of providers;
- b) the longevity of those providers; and
- c) the presence of alternate provider facilities serving customers.

2. Evidence that local market share gained by the alternative providers throughout the area is significant and/or that the incumbent has sustained a loss of substantial market share.

3. Evidence that the incumbent has experienced a declining trend for retail access lines, while at the same time the number of alternate provider lines have continued to grow.

4. Evidence of whether services are extensively available from alternate providers, and whether such available alternatives provide a competitive constraint on the incumbent.

5. Evidence of whether the services available from alternative providers are functionally equivalent or substitutable, such that they should be taken into account in evaluating competition among telecommunications providers.

6. Evidence of whether the quality of substitutability of wireless and VoIP for wire line service is reasonably interchangeable for landline service.

7. Evidence of whether there are economic or regulatory barriers to entry preventing alternative providers from competing.

8. Evidence of whether competition is likely to increase or decline in the future as a result of regulatory changes and other circumstances.

9. Evidence showing that increased pricing flexibility would provide an incentive to the incumbent and to its competitors to invest in communications infrastructure, e.g. new facilities, accelerate deployment and development of advanced technologies. (This requires evidence demonstrating a positive relationship between pricing flexibility and improvements in infrastructure.)

10 Evidence showing the benefits of competition in general and specifically about the benefits to be expected from granting the incumbent pricing flexibility.



# **ATTACHMENT B**



# NEWS

Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D. C. 20554

News media Information 202 / 418-0500  
TTY 202 / 418-2555  
Fax-On-Demand 202 / 418-2830  
Internet: <http://www.fcc.gov>  
<ftp.fcc.gov>

---

This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F.2d 385 (D.C. Cir. 1974).

---

FOR IMMEDIATE RELEASE:  
January 24, 2001

NEWS MEDIA CONTACT:  
Michael Balmoris 202-418-0253  
Email: [mbalmori@fcc.gov](mailto:mbalmori@fcc.gov)

## **FEDERAL COMMUNICATIONS COMMISSION TAKES STEPS TO MAKE DIRECTORY ASSISTANCE SERVICE MORE COMPETITIVE**

### *Measures Should Improve Accuracy of Directory Assistance Information*

Washington, D.C. – The Federal Communications Commission (FCC) has adopted a Report and Order to increase competition in the provisioning of directory assistance information – an important element in a competitive telecommunications market. Specifically, the Commission ruled that local exchange carriers (LECs) must provide qualified competing directory assistance providers with nondiscriminatory access to the LECs' local directory assistance databases, and must do so at nondiscriminatory and reasonable rates. Increased competition in the directory assistance market should result in lower prices and better service quality for consumers, including more accurate directory assistance information.

Essential to a competitor's ability to provide directory assistance is access to accurate local directory assistance databases. Because incumbent LECs derive their local directory assistance databases through their telephone service order processes, they continue to maintain control over the vast majority of local directory listings that are necessary for the competitive directory assistance market. Without nondiscriminatory access to the incumbents' directory assistance databases, competing directory assistance providers have had difficulties in offering a competitive directory assistance product.

### **Telephone Directories on the Internet**

In the Order, the Commission also resolved certain issues relating to telephone directory publishing, including extending rights to subscriber list information at nondiscriminatory and reasonable rates to publishers of telephone directories on the Internet. The Commission also concluded that publishers of telephone directories on the Internet should not be restricted in the manner in which they display or allow customers to access the data.

-FCC-

CC-Docket No. 99-273

Action by the Commission January 19, 2001 by Report and Order (FCC 01-27).  
Chairman Kennard and Commissioners Ness, Furchtgott-Roth, Powell and Tristani.

Common Carrier Bureau Staff Contact: Gregory Cooke at 202/418-2320

News about the Federal Communications Commission can also be found  
on the Commission's web site [www.fcc.gov](http://www.fcc.gov).