

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

**RULEMAKING TO ESTABLISH A MORE
UNIFORM DIRECTORY ASSISTANCE
POLICY FOR TELECOMMUNICATIONS
CARRIERS IN TENNESSEE**

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DOCKET NO. 09-00012

COMMENTS OF THE CONSUMER ADVOCATE AND PROTECTION DIVISION

The Attorney General & Reporter Robert E. Cooper, through the Consumer Advocate and Protection Division (“Consumer Advocate”) respectfully submits these comments for consideration by the Tennessee Regulatory Authority (“TRA”, “Authority”).

I. Introduction

The Consumer Advocate is greatly appreciative of the opportunity to submit comments for the TRA to consider in crafting a state-wide local directory assistance (“D.A.”) policy. This is an important issue for consumers of regulated telecommunication companies in Tennessee. It is essential for consumers to have access to traditional D.A. service. The free call allowance and the exemptions from D.A. charges for seniors and those with disabilities is of particular importance in light of significant rate increases for the use of D.A. service with particular respect to consumer of price cap regulated incumbents. The scope and focus of the Consumer Advocate’s concerns lay with D.A. policy currently in place or proposed for price cap regulated incumbents BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee (“AT&T”), United Telephone Southeast, LLC d/b/a Embarq (“Embarq”) and Citizens Telecommunications Company of Tennessee, LLC d/b/a Frontier Communications.

II. The Importance of Maintaining Free Call Allowances For Price Cap Regulated Carriers

A. The Purpose of the D.A. Call Allowances and Exemptions for Seniors and Those with Disabilities is to Protect Consumers

It is well established that D.A. is considered a “non-basic” service under the price cap regulation. However, that designation does not diminish the fact D.A. is a traditional and essential service for many Tennesseans. When the D.A. call allowances were first instituted, the purpose was to insure consumers have access to accurate phone listing information as printed directories frequently become out of date due to natural turnover in phone numbers know as “churn.” Churn still exists today. Phone listing information changes constantly. Although there are alternatives other than traditional D.A., there is no certainty that the alternatives available provide accurate listing information, as the Virginia State Corporation Commission concluded on December 23, 2008 in Case No. PUC-2008-00046.¹

Prior to 1997, D.A. was a free service. Consumers did not pay a charge for using the service each time they sought a phone listing. The actual cost of service for providing D.A. was accounted for and incorporated into the basic rates consumers paid.² However, the introduction of price cap regulation by the Tennessee legislature caused a shift in telecommunication regulation in an effort to promote competition. For those carriers that are price cap regulated, the cost of service is no longer the sole basis in determining telecommunication rates. Price cap regulated carriers such as AT&T can determine rates for non-basic services, such as D.A., as the companies deem necessary subject to the price cap limits.

¹ See copy of Order attached to the Consumer Advocate’s *Motion to Reconsider* filed in Docket 07-00269, January 23, 2009.

² When price cap regulated carriers were permitted to charge for D.A., the cost of service for providing D.A. was not removed from the rates charged for basic rates.

The benefits of D.A. call allowances have been subject to erosion over the years as rates increased and the number of free calls declined at the requests of price cap regulated carriers. Since 1997, the rate charged by price cap regulated carriers for D.A. has risen from \$0.29 to the current high of \$1.50 AT&T charges while the call allowance required by the Authority has regrettably declined from six calls to one. In an era in which advances in technology have led the cost of service for most traditional telephone services to decline, consumers are paying more for traditional and essential 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. 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 rates from going up.

However, the TRA remains the regulator of these companies and is charged to protect consumers. Both the D.A. call allowances and the exemptions for seniors and those with disabilities were created under Tenn.Code Ann. § 65-4-117(3), a provision that allows for just and reasonable standards. In carrying out Tennessee's Telecommunications policy as codified in Tenn.Code Ann. § 65-4-123, the TRA should consider both the call allowance and exemptions for seniors, and potentially for low-income consumers, as just and reasonable measures in protecting the interests of residential consumers.

B. The Free Alternatives to Traditional D.A. Service Are Not Available to All Tennesseans

In the past, when companies have been allowed to lower the call allowance, the Authority has concluded that such reductions were appropriate in light of alternatives available in the communications market. The Consumer Advocate has never disputed that alternatives exist.³ Free alternatives to traditional D.A. include internet search engines for telephone listings. They

³ Wireless providers also provide directory listings. However, there is no free wireless call allowance and the rate is generally \$1.50 per call.

also include free 1-800 telephone services that provide listing information, although these services are advertised predominantly or solely on the internet. Other examples include the use of e-mail for a consumer to contact friends and family when a phone number has been changed. The single common dominator of the free alternatives presented is that internet access is required for consumers to avail themselves of them at home. The Consumer Advocate submits that such alternatives are not readily available to all consumers.⁴

In order to have access or become aware of these free alternatives, consumers must have access to the internet. A digital divide still exists in this state in terms of basic access to the internet at home. The Consumer Advocate's proof as to the availability of these alternatives remains undisputed. The level of income a household makes is a determining factor in whether internet access is present in the home.⁵ The lower the level of income, the less likely one is to have internet access or even a computer at home. It has been the general position of Embarq and the price cap regulated industry that simply because alternatives exist, call allowances should be reduced, or in the case of one company's proposed tariff, entirely extinct. The irony of this logic is that those households not so abundantly blessed that cannot afford access to the internet will be subject to higher and higher rates for a service that was formerly free. The households that can easily afford climbing rates for traditional D.A. service are much more likely to have access to free alternatives and thus avoid the higher rates.

Income level is a pre-dominant factor as illustrated by the Connected Tennessee data. Should the Authority elect to create a new exemption for Life-line consumers, the Consumer

⁴ The data relied upon by the Consumer Advocate was collected by Connected Tennessee, a non-profit organization. This information is attached to Mr. Chrysler's Direct Testimony filed in Docket 07-00269 on July 1, 2008.

⁵ Docket 07-00269 Transcript of Proceeding (October 6, 2008), p. 95; Hearing Exhibit – Summary of Testimony of Michael D. Chrysler ("Summary"), p. 1 (copy for convenience at Attachment A); Direct Testimony of Mike Chrysler (July 1, 2008).

Advocate would welcome the initiative.⁶ However, a Life-line exemption is not a complete resolution for this policy issue. Due to the poverty level guidelines required to sign up for Life-line service, many Tennesseans that do not have access to the internet may not qualify for Life-line.⁷ In fact, according to the TRA's most recent annual report, less than 50,000 Tennesseans are Life-line subscribers.

Connected Tennessee has collected a wide range of information regarding the availability of the internet and computer ownership. The Consumer Advocate relies primarily on the 2007 survey data as it was developed based on over 10,000 Tennesseans, with at least 100 surveyed in each county while the 2008 update covered only 1,200 Tennesseans without reference to their location. Given the scope of the respective surveys conducted by Connected Tennessee, the Consumer Advocate considers the 2007 data as more representative of the state.

There are many factors documented by the Connected Tennessee data for the Authority to consider other than household income in regards to the availability of internet access. The Connected Tennessee data has shown that a correlation exists in terms of access to the internet in relation to the education level obtained.⁸ The less education one has obtained the less like they will have access to the internet. The Connected Tennessee data has shown that a disparity exists in terms of race and internet access.⁹ Further, a disparity exists in terms of rural vs. urban areas.¹⁰ Similarly, Mr. Chrysler's pre-filed Direct Testimony in Docket 07-00269 notes similar negative correlations in terms of computer ownership which each of these factors.¹¹

⁶ *Id.*, p. 97 of Transcript.

⁷ *Id.*

⁸ *Id.*, p. 96 of Transcript, p. 2 of Summary.

⁹ *Id.*, p. 3 of Summary.

¹⁰ *Id.*, p. 4 of Summary.

¹¹ Direct Testimony of Mike Chrysler (July 1, 2008).

These factors illustrate that on a state-wide level not all consumers have access to free alternatives to traditional D.A. service. Not all consumers have the same level of technological affluence from which to access free alternatives and avoid the increasing rates for traditional D.A. service.

III. Comments Concerning the Exemptions from D.A. Charges for Seniors and Those with Disabilities

A. The Importance of Maintaining the D.A. Exemptions for Seniors and Those with Disabilities

The exemptions from D.A. charges for seniors and those with disabilities is an important policy for Tennessee. The mandatory requirement for price cap regulated carriers to provide exemptions for seniors and those with disabilities must be maintained. The exemptions serve a recognized public interest. There are certain realities that must be recognized. Data collected by Connected Tennessee recognizes that the digital divide in this state extends to seniors with reports indicating only 40% to 44% of seniors in Tennessee have access to computers and the internet. The Consumer Advocate opposes any proposal to make D.A. call allowances or D.A. exemptions for seniors or those with disabilities an optional offering at the discretion of a price cap regulated carrier.

B. The Importance of Effective Company Promotion Efforts for D.A. Exemptions

This is an important benefit for seniors and those with disabilities; however they cannot take advantage of the exemptions if their existence is not known. Information that arose during Docket 07-00269, a contested case regarding Embarq's call allowance, has driven the concerns of the Consumer Advocate that not enough is being done by price cap regulated carriers to make known the existence of the exemptions to the public. There is no public information available regarding the number of exemptions AT&T has granted to seniors and those with disabilities. At

this point, the efforts of AT&T to promote the exemptions cannot be assessed against the results of the number of exemptions granted.

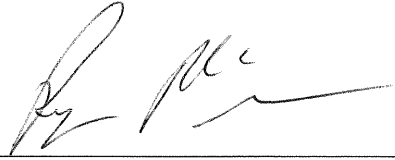
In Docket 07-00269, Embarq made proposals for better promoting the exemptions which the Hearing Panel approved. Those specific proposals are positive steps in the right direction and should be applied to all of the price cap regulated carriers. However, more can be done as suggested by the American Association for Retired People at that workshop in this matter. For example, customer service representatives that handle billing and service complaints can briefly inform consumers about the exemptions. In addition, a taped message disclosing the existence of the exemption could be played briefly for consumers that are placed on hold during calls to customer service representatives. These are just some of the activities price cap regulated carriers could implement at a minimal if even measurable cost.

In order for the Authority to monitor and insure the exemptions are being successfully promoted, price cap regulated carriers should annually report the total number of exemptions granted and note the activities the companies has engaged in to promote the exemptions.

IV. Comments Regarding Concerns of the Industry in Regards to Competition

Price cap regulated companies have argued that a requirement for a D.A. policy prevents them from competing. However, it remains to be seen how raising D.A. rates and eliminating D.A. call allowances and exemption provided by price cap regulated carriers encourages market competition. In Docket 07-00269, a contested case considering Embarq's D.A. tariff, no evidence was presented to show customers had been lost due to the provision of a call allowance.

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 Comments was served on interested parties via facsimile, U.S. Mail, hand delivery, commercial delivery, or e-mail, on the 13 day of March 2009.



Ryan L. McGehee
Assistant Attorney General