

Voice | Data | Internet | Wireless | Entertainment



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

filed electronically in docket office 5/18/2009

May 18, 2009

Hon. Eddie Roberson, Chairman
c/o Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37238


Re: *Rulemaking for Competitive Exemptions for Price Regulated and Competitive Carriers,*
Docket No. 09-00032

Dear Chairman Roberson:

Enclosed for filing in the above referenced docket are the original and four copies of United Telephone Southeast LLC d/b/a Embarq's ("Embarq's") *Comments on Rules for Exemption Petitions*. Embarq has already filed the enclosed electronically; however, this letter is the required follow-up.

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

Sincerely,



Edward Phillips

Enclosures

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 for Competitive Exemptions
for Price Regulated and Competitive Carriers

)
)
)
)
)
)

Docket No. 09-00032

COMMENTS ON RULES FOR EXEMPTION PETITION

The Tennessee Regulatory Authority (“Authority”) conducted a public hearing on April 20, 2009 concerning the proposed rules promulgated in this docket on February 27, 2009. At the public hearing, the Authority stated that interested parties could file written comments concerning the proposed rules on or before May 18, 2009.

United Telephone Southeast LLC d/b/a Embarq (“Embarq”) has reviewed the proposed rules, the transcript of the April 20th public hearing and the May 8, 2009 comments filed by AT&T Tennessee. Embarq is in agreement with the comments submitted by AT&T Tennessee concerning the proposed rules and their relationship with House Bill 1698/Senate Bill 1954 – the “Market Regulation Act of 2009” – which has now passed the Tennessee General Assembly’s House and Senate as of the date of these comments.

Should that bill be signed by the Governor and become law, Embarq recommends that the Authority modify the proposed rules to clarify that the competitive exemption criteria for price regulated companies found in the proposed rules at 1220-4-16-.03 and .04 are associated with the statutory exemption found at Tenn. Code. Ann. § 65-5-108(b). This would serve to

avoid confusion with the process found in the market regulation bill at what would be new Tenn.Code.Ann. § 65-5-109(o)(i). At the same time, the Authority should consider having the competitive exemption criteria in the proposed rules more closely follow the market regulation bill's threshold for market regulation found at the new subsection mentioned above. The Authority should also consider applying to price regulated companies that meet the proposed rule's competitive exemption criteria the same regulatory freedoms accorded to market regulated companies by the market regulation bill.

Moreover, the Authority's proposed rules should specify that the competitive exemption criteria is but a single, streamlined method for a price regulated company to prove that a telecommunications service meets the statutory criteria found at Tenn. Code. Ann. § 65-5-108(b). That statutory criteria is simply whether existing or potential competition is an effective regulator of the price of a service. The proposed rule's competitive exemption criteria should be thought of as an obvious instance of existing competition being an effective regulator of prices, thus meriting the proposed rule's presumption and streamlined administrative process. But a price regulated company may still be able to satisfy the statutory exemption criteria based upon other supporting evidence. In such cases, the Authority should not preclude a price regulated company from filing a petition based directly upon Tenn. Code. § Ann 65-5-108(b), albeit unaided by the proposed rule's presumption or streamlined process.

Embarq also supports AT&T Tennessee's comments concerning the rebuttable presumption the market regulation bill extends to market regulated companies at what would be new Tenn. Code. Ann. §65-5-109(o)(v). In instances where an intervening party is unwilling or unable to fulfill the essential discovery obligations the Authority's rules already impose, the

Authority should include in the proposed rules a rebuttable presumption that such an intervening party is offering service in the disputed area(s).

Respectfully submitted this 18th day of May, 2009.

A handwritten signature in cursive script, reading "Edward Phillips", is written over a solid horizontal line.

Edward Phillips

Counsel

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. 16850