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October 3, 1996

Nashville, Tennessee

TN REGULATORY AUTHORITY
UTILITY RATE DIVISION

IN RE: **UTILITY COMPLAINT OF ZETA IMAGE, INC. VS. UNITED
TELEPHONE-SOUTHEAST**

DOCKET NO. 96-00462

ORDER

This matter came to be heard before the Tennessee Regulatory Authority (the "Authority") at a Conference held on August 13, 1996, in the hearing room at 460 James Robertson Parkway, Nashville, Tennessee. At the conclusion of the hearing, the Directors asked for certain additional information and later asked that the information be submitted to them by August 22, 1996. The Authority announced its decision at a Conference held on August 28, 1996, in the hearing room at 460 James Robertson Parkway, Nashville, Tennessee.

FACTS

1. In 1989, United Telephone-Southeast ("United") submitted a tariff which applies to its Advanced Business Connection Centrex Service (the "ABC Tariff") to the Tennessee Public Service Commission (the "PSC"). The ABC Tariff was reviewed and approved.
2. The ABC Tariff (U13.18.1, Subsection L) reads, in pertinent part, "[w]hen ABC lines are terminated into customer provided terminal equipment **capable of switching and/or extending calls**, each ABC line will require a NAR." [emphasis supplied] A "NAR" is a Network Access Register.
3. In 1991, Zeta Image, Inc. ("Zeta") incorporated as a Tennessee corporation. In January, 1995, Zeta began operating an Internet access service called "The Tri-Cities

Connection" in Kingsport, Tennessee. (see Pre-Filed Testimony of David W. Sieg, page 1).

4. In May, 1995, Zeta desired to expand its operations and leased a facility in Johnson City, Tennessee. Acting through Alan Sieg, its Vice President, Zeta contacted various United employees, including Ms. Debbie Morton, Mr. Tom Hurt, Mr. George Bottcher, and Ms. June Seaton, and attempted to reach, both directly and indirectly, Ms. Laura Sykora, who is Regulatory Affairs Manager-TN for United, in order to obtain business lines and to determine how many NARs United would require Zeta to procure. Zeta maintains that it was never given a consistent or a definitive answer from United regarding the NAR requirement, but does admit that it was eventually told that more than one NAR would be required. (see Pre-Filed Testimony of David W. Sieg, pages 2-5).

5. On May 26, 1995, Zeta complained orally to the PSC about United's position that more than one NAR would be required and was eventually told that the PSC agreed with United's interpretation and application of the ABC Tariff. (see Pre-Filed Testimony of David W. Sieg, page 5).

6. Sometime following the receipt of this information from United and advice from the PSC, Zeta ordered twelve (12) ABC lines with no features and one NAR at its Johnson City facility through its landlord, Mr. Stan Mosley. (see Pre-Filed Testimony of David W. Sieg, page 5).

7. In November, 1995, United discovered that the actual user of the ABC lines was Zeta and not Mr. Mosley's company, billed Zeta for back charges, and added a NAR to each ABC line. (see Pre-Filed Testimony of David W. Sieg, page 6).

8. Since that time, Zeta has paid approximately sixty (\$60) dollars for each ABC line and NAR.

9. In November, 1995, Zeta sought the opinion of the staff of the PSC on the question of "whether a modem is considered 'terminal equipment capable of switching and/or extending telephone calls'." By letter dated November 22, 1995, David W. Seig was informed that the staff of the PSC regarded modems as equipment capable of extending telephone calls.

10. United agreed that Zeta (and other internet service providers) fit the description of enhanced service providers as outlined by FCC Rule 64.702. (see Pre-Filed Testimony of Laura A. Sykora, page 3).

11. United maintained that it was not treating Zeta as a reseller, that Zeta was being treated as a local business exchange user, that United had correctly applied its ABC Tariff to Zeta, and that, if Zeta wished to reduce its bills from United, it had available to it a more economical package - the Rotary Lines with the Local Measured Service option.

TRAVEL OF THE CASE

1. Zeta filed a letter of complaint with the PSC on February 19, 1996 pursuant to T.C.A. § 65-4-119 (the "Complaint"). In the Complaint and pre-filed testimony, Zeta alleged, among other things, that United's tariff treated "a computer modem as a telephone switch" (see Pre-Filed Testimony of David W. Sieg, page 7) and thus it treated Zeta as a reseller not an enhanced service provider. (see Complaint dated February 19, 1996, page 1). This, Zeta claimed, was a misinterpretation of the ABC Tariff. Zeta further claimed that "the tariff's emphasis on what equipment is connected to a line is meaningless and

functionally irrelevant” (see Pre-Filed Testimony of David W. Sieg, page 9) and thus “the tariff is unreasonably discriminatory.” (see Complaint dated February 19, 1996, page 3).

2. On May 7, 1996, the PSC scheduled a hearing in the proceeding and required that testimony be filed on or before May 16, 1996. Both Zeta and United filed pre-filed testimony. On May 21, 1996, Administrative Law Judge Ralph B. Christian heard the matter in the auditorium of the Public Library at 400 Broad Street, Kingsport, Tennessee.

3. On June 7, 1996, Judge Ralph B. Christian issued an “Initial Order” and required that United Telephone-Southeast remove the provision regarding NAR requirements contained in the ABC Tariff and modify its ABC Tariff to require NARs for both outgoing and incoming access.

4. On June 13, 1996, Zeta filed a “Petition for Clarification of the Initial Order” based upon its contention that the Administrative Law Judge should have stated the grounds for his Initial Order with more specificity. Zeta specifically asked the Administrative Law Judge to make an explicit finding that “the [ABC] tariff language is unreasonable and/or discriminatory in violation of state law.” (see Petition for Clarification of the Initial Order, page 3). On June 18, 1996, United filed its response and maintained that all the Administrative Law Judge had ordered was that the tariff be rewritten so that the NAR requirement applied to both inbound and outbound traffic. (see Response to Petition for Clarification, page 1).

5. On June 19, 1996, Judge Christian declined to clarify his Initial Order.

6. On June 21, 1996, Zeta filed its "Exceptions and Motion for Oral Argument" and on June 24, 1996 United responded in its "Reply of United Telephone-Southeast, Inc. to Zeta's Exceptions and Motion for Oral Argument".

7. On June 30, 1996, the PSC ceased to exist and ordered that all matters pending before it, including the above-captioned matter, be handled in accordance with the laws of the State of Tennessee.

8. On July 12, 1996, Zeta filed its "Petition to Re-Institute Proceedings" in which it requested that the proceeding be recommenced before the Authority and the issues be set for oral argument. Such Petition was addressed by the Authority in its Administrative Order No. 1 dated July 18, 1996 and oral argument was heard on August 13, 1996.

9. The Authority reached its decision upon a motion made and seconded by an affirmative vote of two Directors, with one Director abstaining, at its Conference on August 28, 1996.

IT IS THEREFORE ORDERED:

1. That the Authority declines to affirm the Initial Order of the Administrative Law Judge issued on June 7, 1996.

2. That the Authority has found Zeta to be both an "enhanced service provider" and an "end user" under existing law as expressed in FCC Rule 64.702 and its Order in FCC Docket 78-72.

3. That the ABC Tariff, as it is applied to Zeta, is insufficient, discriminatory, unreasonable, and excessive and must be modified by United.

4. That such modification must be in clear and unambiguous language, must be consistent with this Order and all applicable law, including, but not limited to, those provisions governing the rates applicable to basic local exchange telephone service rates and must be submitted to the Authority by no later than December 2, 1996.

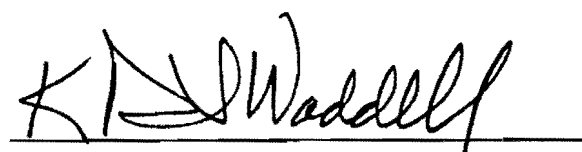
5. That the relief, if any, provided to Zeta pursuant to this Order is prospective in nature and shall be applicable from the date that the modified tariff is effective, not retroactively applied.

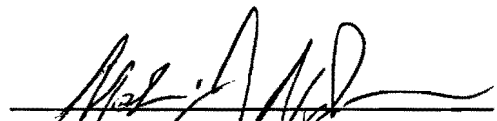
6. That any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within ten (10) days from and after the date of this Order.

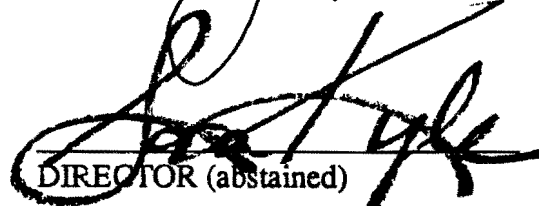
7. That any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.


CHAIRMAN

ATTEST:


EXECUTIVE SECRETARY


DIRECTOR


DIRECTOR (abstained)