

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TN

OFFICIAL FILE

UNITED TELEPHONE-SOUTHEAST INC. (UTSE))
TARIFF NO. 96-201 TO REFLECT) DOCKET NO. 96-01423
ANNUAL PRICE CAP ADJUSTMENT) TARIFF NO. 96-201

PLEASE

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EXECUTIVE SECRETARY

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RESPONSE IN OPPOSITION TO MOTION TO STRIKE
TESTIMONY OF ARCHIE HICKERSON

The Consumer Advocate Division respectfully requests the Tennessee Regulatory Authority to deny UTSE's Motion To Strike the Testimony of Archie R. Hickerson. UTSE argues that the Consumer Advocate Division and non parties have a duty to prevent it from asking the TRA to approve illegal rates and classifications and that if no one intervenes the TRA is implicitly authorized to approve illegal rates and classifications. UTSE cites no authority for either proposition and UTSE's position is contrary to law.

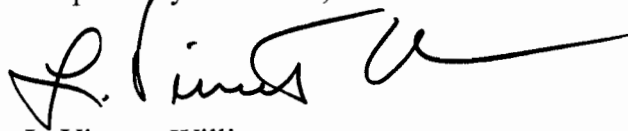
An agency has no authority to create rights in either itself or others. When it approves requests, such as the prior Centrex request of UTSE, the TRA is regulating. Administrative bodies, which are created by legislation, do not have the power to make rules or regulations inconsistent with law or to make rules or enact laws affecting or creating substantive rights. TASCO Developing and Building Corp. v. Long, 368 S.W.2d 65 (Tenn. App. 1963); Polk County v. Board of Equalization, 484 S.W.2d 49 (Tenn. App. 1972). The TRA had no power to make a decision inconsistent with law. Thus, it could not create a substantive right in UTSE

regarding one classification of Centrex Service or in regards to increasing the cost of residential lines. Therefore, the TRA's actions are ultra or intra vires,¹ and voidable. Tennessee American Water v. Public Service Commission, Tennessee-American Water Company V. Tennessee Public Service Commission, filed April 11, 1985, (Tenn. App., M.S.).

. Moreover, the testimony of Mr. Hickerson is relevant to this proceeding and no valid grounds exists for striking it.

Wherefore the Consumer Advocate Division prays that the Motion to Strike the testimony of Archie R. Hickerson be denied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L. Vincent Williams', with a long horizontal flourish extending to the right.

L. Vincent Williams
Consumer Advocate

¹ City of Lebanon v. Baird, 756 S.W. 2d 236, 241, 242 (Tenn. 1988)

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Response was served on parties of record via U.S. Mail, postage prepaid, this 27th day of February, 1997.


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TENNESSEE REGULATORY AUTHORITY

Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director



460 James Robertson Parkway
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NOTICE OF HEARING

DOCKET: 96-01423

PETITIONER: United Telephone-Southeast

PETITIONER'S ATTORNEY: James B. Wright

IN RE: TARIFF FILING BY UNITED TELEPHONE-SOUTHEAST TO
REFLECT THE ANNUAL PRICE CAP ADJUSTMENT.
TARIFF 96-201.

DATE: February 24, 1997

Pursuant to T.C.A. 65-4-201 *et seq.*, the Authority has scheduled a **Hearing** in Docket 96-01432 for Tuesday, March 11, 1997, at 9:00 a.m. in the Hearing Room on the Ground Floor at 460 James Robertson Parkway, Nashville, Tennessee, 37243-0505.

The procedural schedule is as follows:

Direct testimony due	Friday, February 14, 1997; 12 noon
Rebuttal testimony due	Friday, February 21, 1997; 12 noon
Surrebuttal testimony due	Wednesday, February 26, 1997; 12 noon
Hearing	Tuesday, March 11, 1997 at 9:00 a.m.

The hearing will be conducted in accordance with the Tennessee Uniform Administrative Procedures Act, T.C.A. 4-5-101 *et seq.* All parties are entitled to be represented by counsel.

Any motion to change the date of this **Hearing** must be made in writing, filed with the office of the Executive Secretary of the Authority, and directed either to the presiding Hearing Officer or the Chairman of the Authority. Copies of the motion must be served on all parties.

Participants with disabilities who require special accommodations or alternative communications formats should contact the Tennessee Regulatory Authority ADA-EEO/AA Coordinator/Officer, 460 James Robertson Parkway, Nashville, Tennessee, 37243-0505, 1-800-342-8359 or TDD 741-3930 so that reasonable accommodations can be made.

FOR THE TENNESSEE REGULATORY AUTHORITY:

K. David Waddell, Executive Secretary

cc: Parties of Record
Interested Parties