



BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-3300

615 214-6301
Fax 615 214-7406

RECEIVED
BELL SOUTH
'97 APR 25 AM 10 55

Guy M. Hicks
General Counsel

EX-111-1
April 25, 1997
SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 to Reflect Annual Price Cap Adjustment*
Docket No. 96-01423

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Reply of BellSouth Telecommunications, Inc. to the Consumer Advocate Division Brief "Regarding Directory Assistance" in the above-referenced matter. A copy has been provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

OFFICIAL FILE
PLEASE
DO NOT REMOVE

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 To Reflect Annual Price Cap Adjustment*

Docket No. 96-01423

RECEIVED
'97 APR 25 6 37 PM
EXECUTIVE SECRETARY

BELLSOUTH TELECOMMUNICATIONS, INC.'S
REPLY TO THE CONSUMER ADVOCATE DIVISION'S
BRIEF "REGARDING DIRECTORY ASSISTANCE"

The plain language of the controlling statutes make it clear that directory assistance is not a basic service. Every legislator who addressed the issue either said that directory assistance is not a basic service or that the legislation allows Local Exchange Companies ("LECs") to charge for directory assistance. The Consumer Advocate Division ("CAD") itself conceded during the legislative debate that the statute grants "essentially unlimited" flexibility with regard to directory assistance. Even in the face of this daunting evidence of legislative intent, the CAD desperately attempts to force the square peg of directory assistance into the round hole of basic services. In doing so, the CAD ignores the plain language of the statutes, the time-honored principles of statutory construction, and the compelling legislative history.

The CAD first attempts to remove the single word "usage" from its context in the statutes in order to impermissibly contort the plain language of the statutes. Tennessee courts, however, have long recognized "that it is improper, in construing a statute, to take a word or a few words from its context, and, with them thus isolated, attempt to determine their meaning." First National Bank of Memphis v. McCanless, 207 S.W.2d 1007, 1010 (Tenn. 1948). Although the CAD refers to "usage" as though it is an independent and open-ended term, this simply is not the

case. Instead, the term appears in the context of a single item in the statutory list of basic services:

"Basic local exchange telephone services" are telecommunications services which are comprised of . . . touch tone and usage provided to the premises for the provision of two-way switched voice or data transmission over voice grade facilities of residential customers or business customers within a local calling area (Emphasis added).

§65-5-208(a)(1). No aspect of service, therefore, is "usage" unless it is provided for the provision of two-way switched voice or data transmission over voice grade facilities. Directory assistance is not provided for the provision of such switched transmission over voice grade facilities. Accordingly, the term "usage" does not -- and cannot -- include directory assistance.

The CAD next asserts that the pendency of a tariff somehow affected the legislature's intent when it passed the relevant statutes.¹ As evidenced by the legislative debate cited in the CAD's own brief, however, the legislature intended to allow LECs to charge for directory assistance under the act regardless of whether they could charge for it prior to the act. For example, after stating that "under this bill" directory assistance is not a basic service, see CAD's Brief at 11, Senator Rochelle stated his belief that the LECs "already are authorized to institute charges for directory assistance . . . that's my understanding, they are, but it doesn't really change that."² CAD's Brief at 14. Immediately following this statement, Senator Gilbert stated that the

¹ Ironically, the tariff that was pending would have allowed BellSouth to charge for directory assistance. It is this tariff to which the CAD refers when it states "[u]nder the terms of the agreement, the division would no longer object to BellSouth's directory assistance tariff." (CAD Brief at p. 18).

² The CAD turns this statement on its head by arguing that Senator Rochelle meant that the LECs could not charge for directory assistance under the legislation. The context of his statements clearly indicate that Senator Rochelle meant exactly what he had said just a few minutes earlier -- that under the legislation, "one does not get directory service under the basic

LECs might have had to seek the PSC's approval to charge for directory assistance before the act, but he then reiterated what Senator Rochelle had already made clear: "under this bill, [the LECs] would be permitted to [charge for directory assistance] without PSC approval." CAD's Brief at 14. It is clear, therefore, that the legislature intended for LECs to be allowed to charge for directory assistance regardless of whether they could charge for it prior to the passage of the act.

The CAD's contention that the list of services included in the statutory definition of basic services "is not exclusive or limited only to those items enumerated" defies logic. The same statute that lists the services included within the term "basic local exchange telephone services" clearly defines "non-basic services" as "telecommunications services which are not defined as basic local exchange telephone services" § 65-5-209(a)(1),(2). If everything not defined as basic service is non-basic, then the statutory list of basic services is necessarily exclusive and limited only to those items enumerated.

Finally, in an attempt to bolster his statutory construction argument, the CAD seeks to draw a parallel between the Tennessee Consumer Protection Act and T.C.A. § 65-5-208(a)(1) by citing the following language from the Tennessee Court of Appeals:

Our inquiry is whether price fixing is an unfair or deceptive act or practice. While price fixing is not among the unfair or deceptive acts or practices specifically enumerated in T.C.A. § 47-18-104, it is clear that the enumeration of unfair or deceptive acts or practices is not exclusive nor limited only to those acts enumerated³

What the Consumer Advocate fails to point out is that while the Tennessee Consumer Protection Act enumerates a list of unfair or deceptive acts which are deemed to be unlawful, it

set of services, basic services, no" and that the legislation therefore allows the LECs to impose charges for directory assistance.

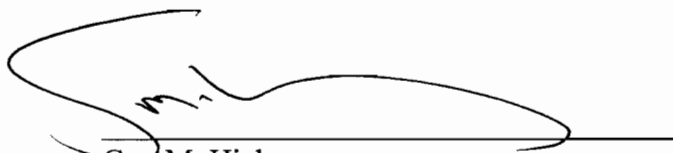
³ Blake v. Abbott Laboratories, C.A. No. 03A01-9509-CV-00307, filed April 24, 1996, (Tennessee App.) Pet. to Rehear denied.

also contains a "catchall" provision ("engaging in any other act or practice which is deceptive to the consumer or to any other person") (emphasis added)⁴. This, of course, is to be contrasted with Section 65-5-208(a)(1) which enumerates a distinct set of services and which contains no such "catchall" provision. The CAD's argument also conveniently ignores T.C.A. § 65-5-208(a)(2) which provides that any telecommunications service not enumerated as a basic service is a non-basic service.

In light of the TRA's directive to keep any reply briefs as concise as possible, BellSouth has not repeated the analysis presented in its "Brief Regarding Statutory Construction of T.C.A. §65-5-208" filed March 21, 1997. This reply brief, therefore, complements BellSouth's principle Brief and taken together, these two Briefs make it clear that directory assistance is not a basic service. Again, every legislator who addressed this issue, including proponents and opponents of the legislation, either said that directory assistance is not a basic service or that the legislation allows LECs to charge for directory assistance. The legislative intent, therefore, is clear, and the TRA should approve United's directory assistance tariff.

Respectfully submitted,

BellSouth Telecommunications, Inc.

A handwritten signature in dark ink, appearing to read "Guy M. Hicks", is written over a horizontal line.

Guy M. Hicks
Patrick W. Turner
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

⁴ T.C.A. § 47-18-104(b)(27).

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 1997, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:


Ed Phillips, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Vincent Williams, Esquire
Consumer Advocate Division
426 Fifth Ave., N., 2nd Fl.
Nashville, TN 37243-0500

James B. Wright, Esquire
United Telephone-SE
14111 Capital Blvd.
Wake Forest, NC 27587-5900

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union St., #1600
P. O. Box 198062
Nashville, TN 37219-8062

Val Sanford, Esquire
Gullett, Sanford, et al.
230 Fourth Ave., N., 3d Floor
P. O. Box 198888
Nashville, TN 37219-8888

A handwritten signature in black ink, appearing to be 'S. L.', written over a horizontal line.