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April 24, 1997

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Docket No. 96-01423 (UTSE Annual Price Cap Adjustment)
Reply Brief

Dear Mr. Waddell:

Enclosed for filing in the above case are the original and fourteen copies of United Telephone-Southeast, Inc.'s Reply Brief to the Brief of the Consumer Advocate Division Regarding Directory Assistance.

A copy of this Reply Brief is being furnished to counsel of record.

Sincerely yours,

James B. Wright

James B. Wright

JBW:er

Enclosures

CC: Steve Parrott (with enclosure)
Counsel of Record (with enclosure)
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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

UNITED TELEPHONE-SOUTHEAST, INC.'S REPLY TO
CONSUMER ADVOCATE'S BRIEF REGARDING DIRECTORY ASSISTANCE

The Consumer Advocate Division ("CA") argues in the statutory construction section of its Brief that because T.C.A. Section 65-5-208(a)(1) uses the term "usage" in connection with the definition of "Basic local exchange service" ("Basic Service"), and since directory assistance ("DA") must be considered "usage", then it follows that DA is a Basic Service and United cannot implement a charge for DA.

The first difficulty with this analysis is that the word "usage" is given extraordinary significance while the remainder of the statute is ignored, even after the CA has stated "the TRA must give effect to every word of Tenn. Code Ann. 65-5-208(a)(1)".

When read properly in the context of the entire statute, it is clear that usage is one of a number of descriptive words that precedes the subsequent listing of services that in fact constitute Basic Service. Focusing solely on the term "usage" distorts the significance of the remainder of the statute.

Additionally, the CA defines "usage" so broadly that DA can hardly be considered anything else. Among the definitions used by the CA to support his decision that DA is usage stems from Webster's definition that usage is a "customary practice which prevails within [a] geographical area...and in order to be

controlling upon parties to contract, it must be adopted by them, or well known to parties or to persons in their circumstances."

Based on this definition, it is difficult to imagine that any of the dozens of tariffed telecommunications services offered by United would escape falling into such a broad categorization. Clearly the legislature did not intend for all of United's tariffed services to be Basic Services, since a Non-Basic category was created. Thus, the approach taken by the CA is clearly erroneous.

Also, the most basic rule of general statutory construction provides that when the legislature expressly mentions one or more things, this implies the exclusion of other things (73 AM JUR 2d, Statutes, Sections 211, 310). Thus, under rules of statutory construction, by specifically stating what does constitute Basic Services (access line, etc. for the provision of voice grade facilities, Lifeline, Link-Up, 911 Emergency, educational discounts), the legislature cannot be held to have intended to include other services such as DA.

In the Legislative History portion of the CA's Briefs, there are numerous references to a DA tariff filed by BellSouth and approved by the Tennessee Public Service Commission on January 5, 1995 (CA Brief, pages 17-20). While the CA goes to great lengths discussing whether the legislators knew the exact procedural posture of the tariff filing in view of the expansive comments made during the floor debate, what is glaringly ignored by the CA is the very fact that there were extensive debates that establish the legislators were keenly aware **during their consideration of**

the bill that DA was a service subject to a separate charge. Thus, the failure to specifically include DA as a Basic Service must be considered as an act knowingly done. This result is entirely consistent with all of the other comments contained in the legislative history as discussed in United's Brief.

As to comments during legislative debate, the CA's Brief at page 9 states: "The perspective from which a fact is viewed influences the judgment on its meaning and importance." Similarly, the statements made by the CA himself before the Senate Committee on State and Local Government (United's Brief, page 7) and Senator Rochelle's statements before the entire Senate (CA's Brief, page 11) influenced the perspective of the legislators.

However, the CA tries to discount the comments made by the legislators during the floor debate. First, the CA states that if proposed legislation (SB 891 in this case) is not enacted, the related legislative history has no consequence whatsoever on the interpretation of an existing statute. (CA Brief, page 8). This assertion may be a correct statement of a general legal principle, but it has no relevance to the instant case where the very statute being interpreted is derived entirely from the proposed legislation whose legislative history is being reviewed.

The CA also argues that statements by legislators should not be considered, or should be given minimum consideration. This assertion appears contrary to the general rule that when constructing a statute, legislative debates are regarded as proper to take into consideration and that resort to statements

by members of the legislature, including committee members or chairmen, is permissible. (73 AM JUR 2d, Statutes, Sections 173, 174, 176).

The CA, on pages 9-11 of his Brief, refers to some of the amendments to SB 891 in connection with a discussion of the legal interpretation consequences of a rejected amendment. The supporting discussion on page 10 that follows refers to Section 6B of SB 891 which Section dealt with the price cap formula that was ultimately contained in T.C.A. Section 65-5-209.

The CA inexplicably compares the Section 65-5-209 language with the Basic Services language contained in Section 9 of Chapter 408, which was ultimately enacted as Section 65-5-208. Quite simply, the two provisions were always quite distinct and the attempt to analyze different amendments made to each of them appears meaningless.

The CA, on page 15 of his Brief, cites a portion of the May 24, 1995 Senate proceedings and highlights language dealing with toll free county-wide calling. The CA's highlighted language indicates one legislator felt the proposed Bill contained limitations which would prevent implementing a charge for county-wide calling. On page 16 of his Brief, the CA attributes the highlighted passages to charging for DA and county-wide calling. However, the CA omits the statements of Senator Gilbert, which indicate just the opposite in regard to DA charging. Thus, any attempt by the CA to analogize between county-wide calling and DA based on the legislative history of this Bill is inappropriate

since all the legislative history regarding DA indicates it is not to be considered a part of Basic Service.

With respect to tariffing, The CA, on pages 17-20 of his Brief, asserts that BellSouth could have had Directory Assistance categorized as Non-Basic by implementation of its tariff. Further the CA indicates that United could have determined the categorization of DA by filing a tariff or requesting rates for DA as part of the Company's entry into price regulation. This argument leads to the conclusion that a company, rather than the legislators, can determine by its own actions the services to be included or excluded from the definition of Basic Services. United does not agree with this assertion and feels that it is contrary to T.C.A. 65-4-123 which has a stated goal to "protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider" (CA Brief Page 7). Different categorizations of the same service by a company could prejudice or disadvantage one company over another.

In summary, the CA has not presented any legislative history or legal argument which alters the clear meaning of Basic Service as defined in T.C.A. Section 65-5-208(a)(1). DA is not included as a Basic Service and the rate therefore is subject to treatment as a Non-Basic Service.

Respectfully submitted,
UNITED TELEPHONE-SOUTHEAST, INC.

By James B Wright
James B. Wright

CERTIFICATE OF SERVICE
(UTSE Annual Price Cap Adjustment)

The undersigned hereby certifies that United Telephone-Southeast, Inc.'s Reply Brief has served upon the following counsel of record in Docket No. 96-01423 this 24th day of April, 1997, by FAX, by air express, by hand delivery or by placing a copy of the same in the United States Mail postage prepaid and addressed as follows:

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