

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 1, 1997

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

Order Granting the Consumer Advocate's Motion for an Extension of Time or Continuance, Granting the Motions to Strike Filed by United Telephone-Southeast and BellSouth Telecommunications, Inc., and Adopting a New Briefing Schedule

This matter comes before the Tennessee Regulatory Authority ("Authority") upon several motions by the parties. During the March 11, 1997 hearing in this docket, the Authority requested the parties to submit post-hearing briefs addressing the legislative history of the 1995 telecommunications legislation regarding directory assistance. The Authority ordered the parties to file these briefs by noon on March 21, 1997, and both United Telephone-Southeast, Inc. ("United") and BellSouth Telecommunications, Inc. ("BellSouth") did so. The Consumer Advocate, however, did not file a brief.

Instead, after the filing deadline expired and after BellSouth and United had filed their briefs, the Consumer Advocate filed a motion requesting additional time to file its brief. This motion stated that the Consumer Advocate could not obtain transcripts of certain legislative proceedings and then incorporate those transcripts into its brief by the deadline established by the Authority. The Consumer Advocate, however, did not confer with either United or BellSouth prior to filing this motion for an extension of time.

On April 1, 1997, the Consumer Advocate filed a "Brief on Statutory Construction." Although the Authority had requested a concise document addressing only the legislative history regarding directory assistance, the Consumer Advocate's "Brief" was thirty-nine pages long and, for the most part, it addressed issues other than directory assistance. Three days later, the Consumer Advocate filed yet another "Brief on Statutory Construction" which also addressed issues other than directory assistance. Both BellSouth and United filed motions to strike these briefs from the record.

The Authority placed the Consumer Advocate's Motion for Extension of Time or Continuance on the agenda for its April 15, 1997 conference. Less than an hour before this conference commenced, the Consumer Advocate filed a "Response in Opposition to BellSouth's Motion to Strike, Or in the Alternative, Motion to Submit Testimony in Rebuttal or to Explain, Or in the Alternative, Motion to Strike the Consumer Advocate's Statements to the Legislature." During a recess in the conference, BellSouth and United reviewed this document and, with the consent of all parties, the Authority heard arguments on all of the pending motions at this conference.

1. Consumer Advocate's Motion for Extension of Time or Continuance

The Authority has serious concerns with the Consumer Advocate's conduct related to its motion for an extension of time. Although motions for extensions of time generally should be filed prior to the expiration of the period originally prescribed, the Consumer Advocate waited until after the filing deadline had expired before it requested additional time to file its brief. The Consumer Advocate stated that it was unable to have signatures

notarized in time to file the motion prior to the expiration of the filing deadline, but the Consumer Advocate has filed several motions for extensions of time in other dockets before the Authority without accompanying affidavits and without notarized signatures. Moreover, the Consumer Advocate filed numerous documents with the Authority in this docket without accompanying affidavits and without notarized signatures. Finally, during the April 15 conference, the Consumer Advocate was unable to adequately explain why it felt compelled to attach an affidavit and to notarize signatures on this particular motion or why it waited until the eve of the filing deadline to prepare its motion.

Equally as troubling as the Consumer Advocate's late filing of its motion for an extension of time is the Consumer Advocate's failure to give counsel for United or BellSouth any prior notice of its intention to request an extension of the filing deadline. While prior notice for seeking an extension of time is not required by law, the Consumer Advocate, as a matter of professional courtesy, could have informed BellSouth and United of its desire to obtain an extension as soon as it realized an extension would be necessary.

Despite these concerns, the fact remains that the Consumer Advocate represented that it was unable to obtain transcripts of certain legislative proceedings in time to incorporate the transcripts into its brief prior to the filing deadline. Accordingly, the Authority finds that the Consumer Advocate's failure to file a brief by the deadline constitutes excusable neglect, and the Authority grants the Consumer Advocate's Motion for Extension of Time or Continuance.

2. Motions by BellSouth and United to Strike the Consumer Advocate's Briefs

While both United and BellSouth complied with the Authority's directive to address the legislative history regarding directory assistance in their briefs, the Consumer Advocate filed two briefs which address several issues other than directory assistance. Permitting the Consumer Advocate to address such issues unfairly prejudices United and BellSouth. The Authority, therefore, grants the motions of BellSouth and United to strike the briefs filed by the Consumer Advocate on April 1, 1997 and April 4, 1997. The Authority will also strike the "Response in Opposition to BellSouth's Motion to Strike, Or in the Alternative, Motion to Submit Testimony or Rebuttal or to Explain, Or in the Alternative, Motion to Strike the Consumer Advocate's Statements to the Legislature" filed by the Consumer Advocate on April 15, 1997.

BASED ON THE FOREGOING, the Authority hereby orders the following:

1. The Consumer Advocate's Motion for Extension of Time or Continuance is granted;

2. United's Motion to Strike the Consumer Advocate's Post-Hearing Briefs and BellSouth's Motion to Strike the Consumer Advocate Division's Briefs are granted and the briefs filed by the Consumer Advocate on April 1, 1997 and April 4, 1997 are stricken from the record;

3. The "Response in Opposition to BellSouth's Motion to Strike, Or in the Alternative, Motion to Submit Testimony or Rebuttal or to Explain, Or in the Alternative, Motion to Strike the Consumer Advocate's Statements to the Legislature" filed by the Consumer Advocate on April 15, 1997 is also stricken from the record;

4. The Consumer Advocate may file a concise brief on the sole issue of the legislative history regarding directory assistance no later than noon on Friday, April 18, 1997;

5. United and BellSouth may supplement their briefs on the issue of the legislative history regarding directory assistance by noon on Friday, April 18, 1997; and

6. Any party may file reply briefs consisting of no more than five pages by noon on Friday, April 25, 1997.

ENTERED this 1st day of May, 1997.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY