

OFFICIAL FILE

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

PLEASE

DO NOT REMOVE

IN RE: TARIFF FILING BY UNITED)
TELEPHONE-SOUTHEAST, INC. TO)
REFLECT ANNUAL PRICE CAP)
ADJUSTMENT (TARIFF NO.96-201))

DOCKET NO. 9600-21

RESPONSE IN OPPOSITION TO MOTION TO STRIKE

Comes the Consumer Advocate Division in opposition to BellSouth's Motion to Strike the Consumer Advocate Division's Response. The Consumer Advocate Division received the April 28, 1997 Motion on May 1, 1997.

BellSouth and United Telephone submitted a transcript of unsworn statements made by L. Vincent Williams, the Consumer Advocate, to a committee of the General Assembly. Having put these statements at issue, BellSouth now seeks to deny the Consumer Advocate Division of the Due Process right of response.

It's Motion to Strike should be overruled. The Uniform Administrative Procedures Act controls the handling of evidentiary matter. Tenn. Code Ann. §§ 4-5-312 and 4-5-313 provides in pertinent part:

4-5-312. Procedure at hearing.

- (a) The administrative judge or hearing officer shall regulate the course of the proceedings, in conformity with the pre-hearing order if any.
- (b) To the extent necessary for full disclosure of all relevant facts and issues, the administrative judge or hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the pre-hearing order.

4-5-313. Rules of evidence - Affidavits - Official notice.

In contested cases:

EX-100-1-3 SECRETARY
MAY 5 PM 2 32
TENN. SOUTH.

(1) The agency shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The agency shall give effect to the rules of privilege recognized by law and to agency statutes protecting the confidentiality of certain records and shall exclude evidence which in its judgment is irrelevant, immaterial or unduly repetitious.

BellSouth argues that the TRA prior to BellSouth's and UTSE's submission ruled that the Consumer Advocate could not "testify" in a generalized sense in response to Director Kyle's question. The Consumer Advocate's statements are not in response to Director Kyle, they are in response to the companies. BellSouth and UTSE have now put an unsworn statement of the Consumer Advocate at issue and seek to prevent a response.

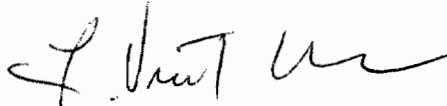
Tenn. Code Ann. § 4-5-312(b) states in pertinent part the administrative judge or hearing officer shall afford to all parties the opportunity to respond, present evidence and argument, and submit rebuttal evidence. Moreover Tenn. Code Ann. § 4-5-313(1) provides in pertinent part that the agency shall admit and give probative effect to evidence admissible in a court and when necessary to ascertain facts not reasonably susceptible to proof under court rules, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent men.

An unsworn statement should be a sufficient response to another unsworn statement. Moreover, the Consumer Advocate has now sworn to the statements made. (See attached affidavit). In addition, the Consumer Advocate is responding to the companies evidence. Furthermore, the statement of the Consumer Advocate is necessary to explain the reasons and basis for the prior statement. Due process and fair dealing requires that the Consumer Advocate be given an opportunity to respond. Finally, the statement made to explain the prior statement is

of a type commonly relied upon.

No valid grounds support the company's motion. As a result the Motion to Strike should be overruled.

Respectfully submitted,



L. Vincent Williams

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been faxed and mailed postage prepaid to the parties listed below this 5th day of May, 1997.

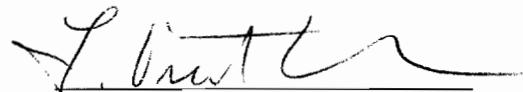
James B. Wright, Esq.
United Telephone-Southeast, Inc.
14111 Capital Blvd.
Wake Forest, NC 27587-5900

Val Sanford, Esq.
230 Fourth Avenue, North, 3rd Floor
Post Office Box 198888
Nashville, TN 37219-8888

Guy M. Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300

Richard M. Tettlebaum, Esq
Citizens Telecom
1400 16th Street N.W., Suite 500
Washington, DC 20036

H. LaDon Baltimore, Esq.
211 Seventh Avenue North
Suite 320
Nashville, TN 37219-1823



L. Vincent Williams

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

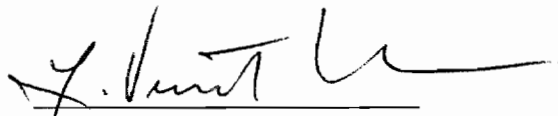
IN RE: TARIFF FILING BY UNITED)
TELEPHONE-SOUTHEAST, INC. TO) DOCKET NO. 96-01423
REFLECT ANNUAL PRICE CAP)
ADJUSTMENT (TARIFF NO.96-201))

AFFIDAVIT

Comes the Affiant, L. Vincent Williams, after being duly sworn who deposes and says:

1. The brief I submitted on behalf of the Consumer Advocate Division accurately describes and states the situation regarding statements I made to the General Assembly and the matters to which those statements refer.
2. I incorporate the narration and reasoning presented in the brief regarding those statements herein by reference.

Further the Affiant sayeth not.


L. Vincent Williams

Sworn to and subscribed before me
this 2nd day of May, 1997.


NOTARY PUBLIC

My commission expires on: Feb, 28, 2001