

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee  
May 29, 1997

ALL TELEPHONE COMPANIES TARIFF FILINGS REGARDING  
RECLASSIFICATION OF PAY TELEPHONE SERVICE AS REQUIRED BY  
FEDERAL COMMUNICATIONS COMMISSION (FCC) DOCKET  
96-128.  
Docket No. 97-00409

**PRELIMINARY REPORT AND RECOMMENDATION OF THE HEARING**

**OFFICER**

A pre-hearing conference was held in the above-captioned matter on Thursday, May 29, 1997, in Nashville, Tennessee before Chairman Lynn Greer acting as Hearing Officer pursuant to the Tennessee Regulatory Authority, hereinafter referred to as "the Authority", Order of May 2, 1997.

**HISTORY**

The FCC established Docket 96-128, for the Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996. Relative to this proceeding the following FCC orders have been issued: FCC 96-388, FCC 96-439, and FCC DA 97-805. Order 97-388, sets forth the guidelines to be followed by the states and companies in the reclassification of pay telephones and the compensation mechanisms to be implemented for pay telephones. Order 97-439, clarifies Order 96-388 and modifies only two issues of the previous order, (1) the requirements for LEC tariffing of payphone services and unbundled network functionalities; and (2) the requirements for LECs to remove unregulated payphone costs from the carriers' interstate common line charge and to reflect the applications of multiline subscriber line charges to payphone lines. Order DA 97-805 grants a limited waiver, until May 19, 1997, of the FCC's requirement that effective intrastate tariffs for payphone services be in compliance with federal guidelines. Additionally, this order clarifies the federal guidelines which are; that affiliated LEC payphones may not receive compensation from the IXC's unless its intrastate offerings to payphone providers are cost based according to the "new services test" (C.F.R. 61.49 (g)(2)).

TRA Orders 97-00344, 97-00345, 97-00346, dated April 7, 1997, approve BellSouth Telecommunication's (BST) and United Telephone Southeast's (UTSE) tariffs reclassifying pay telephones effective April 1, 1997, pending the outcome of the contested case. These dockets have been combined into the current TRA 97-00409 docket.

TRA Order 97-00409, dated May 2, 1997, appoints Lynn Greer as hearing officer, and approves the tariffs of Citizens Telecommunications of TN, Peoples Telephone, West TN Telephone, Ooltewah-Collegedale, Ardmore Telephone, Citizens Telephone of the Vol State, United Telephone, Crockett Telephone, Claiborne Telephone, Adamsville Telephone, Loretto Telephone, Millington Telephone and Telephone Data System (TDS) Companies (Tennessee Telephone, Humphreys County Telephone, Concord Telephone, and Tellico Telephone) that reclassify pay telephones effective April 15, 1997, pending the outcome of the contested case.

Associated with the reclassification, subsidies to pay telephones were estimated by BST, United Telephone, Citizens Telephone of the Vol State, TDS Companies and UTSE. Tariffs became effective (pending the outcome of this contested case) to eliminate the subsidy on the following dates: BST - 4/1/97, UTSE - 5/19/97, TDS Companies - 5/20/97, United Telephone - 4/15/97 and Citizens of the Vol State - 4/15/97.

Tennessee Payphone Owners Association (TPOA), AT&T, The Consumer Advocate Division and MCI Telecommunications Corporation (MCI) filed petitions and were granted intervention in this matter on April 7th, 24th, May 2nd and 12th, respectively.

On May 19, 1997, BST, UTSE, Citizens of the Vol State and Citizens of Tennessee filed certification that payphone service offerings meet the "new services test" required by the FCC.

The TRA established Docket 97-00409, to address the companies compliance with FCC Order 96-128. Tariffs and estimated subsidy calculations have been accepted by the TRA without audit, pending the outcome of this docket. The FCC clarified the cost basis to be used for payphone services on April 15, 1997. As of this date, no determination has been made by the TRA regarding compliance with this cost basis by any company.

### **APPEARANCES**

The following appearances were entered:

AT&T - **Val Sanford**, Esquire, Gullett, Sanford, Robinson & Martin, 230 Fourth Avenue, N. 3rd Floor, Nashville, Tennessee, 37219-8888.

Tennessee Payphone Owners Association ("TPOA") - **Henry Walker**, Esquire, Boulton, Cummings, et al., P.O. Box 198062, Nashville, Tennessee, 37219-8062.

MCI - **Jon Hastings**, Counsel, MCI Telecommunications Corporation, Suite 1600, 414 Union, Nashville, Tennessee 37219.

TDS Telecom ("TDS") and United Telephone South East ("UTSE") - **T. G. Pappas**, Esquire, Bass, Berry & Sims, 2700 First American Center, Nashville, Tennessee, 37219.

BellSouth - **Guy M. Hicks**, Esquire, BellSouth, Suite 2101, 333 Commerce Street, Nashville, Tennessee, 37210-3300.

Citizens Telecom ("Citizens") - **Richard M. Tettelbaum**, Associate General Counsel, Suite 500, 1400 16th Street, N.W., Washington, D.C., 20036, participating by electronic means.

Consumer Advocate Division ("CAD") - **Janet M. Kleinfelter**, Assistant Attorney General, Financial Division, Cordell Hull Building, Second Floor, 425 Fifth Avenue North, Nashville, Tennessee, 37243-0496.

The purpose of the pre-hearing conference was to consider an agreement between the parties, simplification of the issues, a procedural schedule, and any such other matters properly brought before the Hearing Officer in accordance with T.C.A. § 4-5-306.

#### **I. MOTIONS**

The first order of business was the address of several outstanding motions:

- 1.) Both BellSouth and United Telephone South East petitioned for protective orders. The Hearing Officer granted these petitions, with the stipulation that BellSouth work with Authority General Counsel, Dennis McNamee, to finalize the protective order.
- 2.) The Hearing Officer denied a motion from the Consumer Advocate for an extension of time to file a pre-hearing list of issues.
- 3.) BellSouth petitioned to request certification "that the rates set forth in sections A7.4.5 and A7.8.2 of its General Subscriber Services Tariff comply with the "new services" test and Authority approval of this filing. The Hearing Officer ruled that a decision on this petition would be rendered during a contested case proceeding.
- 4.) BellSouth filed a duplicate payphone petition originating Docket 97-01095. BellSouth agreed to withdraw the duplicate petition.

## **II. ORAL MOTION AT HEARING**

The Consumer Advocate made an oral motion for the Authority to bifurcate the docket into two dockets. The current docket would proceed with BellSouth, United Telephone South East and Citizens Communications, Inc. (this would include Citizens Telecommunications Company of Tennessee, L.L.C. and Citizens Telecommunications Company of the Volunteer State, L.L.C.) as parties, and another docket would be opened for the reclassification purposes of the smaller companies. The Hearing Officer ordered the bifurcation, based on the fact that the costs for the studies could be too great for the smaller companies to endure. General Counsel, Dennis McNamee, will write an order based on the oral motion of the Consumer Advocate.

## **III. ISSUES**

The Hearing Officer then produced a consolidated list of issues from the various parties' lists, and asked that these issues be used as a starting point of focus for discovery purposes. The parties thought a final list of the issues would be difficult to define until after discovery had been engaged. Therefore, the parties determined that a final set of issues would be stipulated at the reconvention of the pre-hearing conference on July 8, 1997, at 1:30 pm.

## **IV. OPTIONS**

The Hearing Officer presented the parties with the Authority's options in the continuation of this proceeding. These options are as follows:

- 1.) The parties can agree to a settlement, precipitating an expedited hearing date and subsequent order.
- 2.) Assuming no settlement exists, the Authority may remand the proceeding back to the Federal Communications Commission for decision.
- 3.) Assuming no settlement exists, the Authority may proceed with a contested case proceeding.

The parties conferred among themselves and agreed that no settlement could be reached at this time, and asked that the Authority proceed with the contested case proceeding, and the following schedule.

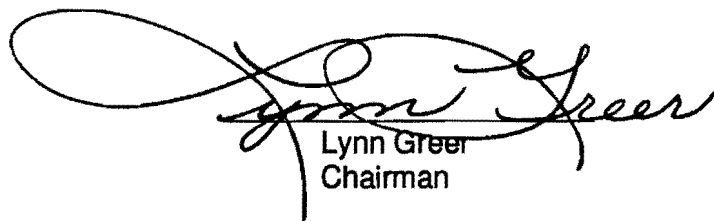
**V. SCHEDULE**

The parties agreed to the following proposed procedural schedule:

June 6, 1997	Cost studies are due at noon.
June 20, 1997	Discovery requests due at noon.
June 30, 1997	Discovery responses due at noon.
July 8, 1997	Reconvene Pre-Hearing Conference at 1:30 pm.
July 10, 1997	Direct testimony filed by noon.
July 17, 1997	Rebuttal testimony filed by noon.
July 24, 1997	Surrebuttal testimony, if necessary, filed by noon.
August 5, 1997	Hearing.

The parties agreed that service could be accomplished by fax or by hand delivery.

The Authority reserves the right to modify this schedule at any time.

  
Lynn Greer  
Chairman