

**COPY****BEFORE THE TENNESSEE REGULATORY AUTHORITY****NASHVILLE, TENNESSEE****IN RE:**

**UNITED TELEPHONE - SOUTHEAST**  
**OBSOLETE OPPORTUNITY 800 SERVICE AND**  
**THE OPTIONAL CALLING PLAN POINT-TO-**  
**POINT AND GRANDFATHER SERVICE TO**  
**EXISTING CUSTOMERS (TARIFF 97-262)**

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**Docket No.**  
**97-01387**

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**ORDER APPROVING STATUS CONFERENCE REPORT AND DENYING**  
**UNITED'S MOTION TO STRIKE AFFIDAVIT OF ARCHIE HICKERSON**

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This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on February 3, 1998, for consideration of the Hearing Officer's Report From The Status Conference Held January 15, 1998 ("Status Conference Report"). At that time, the Authority also considered the Motion to Strike Affidavit of Archie Hickerson ("Motion to Strike") filed by United Telephone-Southeast, Inc. ("United").

**Background**

On January 14, 1998, the Authority entered an Order arising out of action taken at a regularly scheduled Authority Conference on January 6, 1998. At that Conference, the Directors heard oral argument from the parties and found that the record in this cause was insufficient to support the specific assertions of fact made by the parties in their

briefs and oral arguments. Upon agreement of the parties, the Authority re-suspended the tariff and directed the Hearing Officer to convene a post-hearing conference for the purposes of identifying additional factual issues and establishing a proposed schedule by which the parties could conduct discovery and present additional evidence to the Authority.

On January 15, 1998, Hearing Officer Dennis McNamee convened a Status Conference for the stated purposes of: determining a statement of remaining issues of fact; obtaining admissions of fact and documents that would avoid unnecessary proof; and determining when submissions would be made. At the Status Conference the parties stated that they wished to avoid a formal hearing and preferred to develop the record by means of affidavit and attachments.

On January 27, 1998, the parties filed a Supplemental Stipulation for the purpose of enlarging the record in this case. The Supplemental Stipulation included the Affidavit of Laura Sykora, with exhibits, filed by United, and the Affidavit of Archie Hickerson filed by the Consumer Advocate. On January 28, 1998, the Hearing Officer filed his Status Conference Report. Also, on January 28, 1998, United filed its Motion to Strike. As grounds for its motion, United asserted that it had no notice that the Consumer Advocate would be including the Affidavit of Archie Hickerson with the filing of the Supplemental Stipulation and that the Affidavit contained only Mr. Hickerson's opinion as to United's Affidavit and no assertions of facts.

The Status Conference Report was presented by the Hearing Officer to the Directors at the February 3, 1998, Authority Conference. The Directors also heard oral argument on United's Motion to Strike. The Directors unanimously approved the Status Conference

Report and voted to proceed to a disposition of this matter without a hearing. The Directors also voted to deny United's Motion to Strike.

**IT IS THEREFORE ORDERED THAT:**

1. The Status Conference Report filed on January 28, 1998, is hereby approved. A copy of the Status Conference Report is attached to this Order as Exhibit A and the provisions of that Report are incorporated as if fully rewritten herein. Further, this matter will proceed to disposition without a hearing.

2. United's Motion to Strike the Affidavit of Archie Hickerson is hereby denied.

3. Any party aggrieved by the Authority's decision in this matter has the right of judicial review by filing a Petition For Review in the Tennessee Court of Appeals, Middle District, within sixty (60) days of the date of this Order.

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CHAIRMAN

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DIRECTOR

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DIRECTOR

ATTEST:

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EXECUTIVE SECRETARY

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**  
**98 JAN 28 PM 12 19**

**IN RE: UNITED TELEPHONE - )**  
**SOUTHEAST DOCKET NO. )**  
**OBSOLETE OPPORTUNITY )**  
**800 SERVICE AND THE OPTIONAL ) DOCKET NO. 97-01387**  
**CALLING PLANPOINT-TO-POINT )**  
**AND GRANDFATHER SERVICE TO )**  
**EXISTING CSTOMERS (TARIFF 97-262) )**

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**HEARING OFFICER'S REPORT FROM THE STATUS CONFERENCE HELD  
JANUARY 15, 1998**

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On January 6, 1998, at a regularly scheduled Director's Conference, this matter came before the Tennessee Regulatory Authority ("Authority") for oral argument. Upon the conclusion of the oral argument and discussion with the Directors, the Authority determined that questions of fact remained to be resolved. Dennis P. McNamee, General Counsel, in his capacity as Hearing Officer was requested to convene a Status Conference for the purpose of: determining a statement of remaining issues of fact; obtaining admissions of fact and documents that would avoid unnecessary proof; and determining when submissions would be made. The Status Conference was scheduled by Notice and held on January 15, 1998. The Parties agreed orally to waive the statutory ten (10) day Notice period stated in Tenn. Code Ann. § 4-5-307(c). Counsel entering appearances at the Status Conference were:

**James B. Wright, Esq., 14111 Capital Boulevard, Wake Forest, North Carolina, for United Telephone-Southeast, Inc. ("United").**

**Vincent L. Williams, Esq., and Vance Broemel, Esq., 426 5th Avenue, N., 2nd Floor, Nashville TN, for the Consumer Advocate Division, Office of the Attorney General ("CAD").**

**Others in attendance were Laura Sykora for United, Richard Collier, Esq., and Mike Gaines of the Authority Staff.**

**I. Determining a statement of factual issues.**

At the January 6, 1998, Directors' Conference, questions were asked by the Directors that indicated that factual information needed to be entered into the record of the proceeding. These inquiries were:

1. the number of customers currently subscribing to each of the services and the historical customer count by month since the services were initiated;
2. the specific grandfathering period at which time all customers will be required to migrate from the services, or alternatively, the period existing customers will be permitted to maintain the services;
3. reasoning on why each of these services should be grandfathered; and
4. other carriers that offer calling plans from which customers could obtain similar services to those proposed for grandfathering, and the identities of those carriers.

On the first issue United indicated that they could supply month by month numbers of customers for the services for 1997 and year end numbers for 1995 and 1996. United indicated that the numbers are being researched and compiled by hand, and they did not know if they could break them down in more detail, but they would try. On the issue two (2) United indicated that the required migration period from the services in the tariff shall be at the next annual price adjustment filing date under their price cap. This would be October 15, 1998. On issue three (3) United indicated they would be happy to summarize their reasoning on why each of these services should be grandfathered. On issue four (4) United stated that they have some support information from competing carriers and they will attempt to supplement that information.

The CAD made one additional inquiry that becomes issue number five (5). It concerns changes made in the last year in how the two tariffed services were marketed. In making this inquiry the CAD indicated he wanted a twelve month retrospective look at the methodology of the marketing and any representations made by United to the public.

## **II. Admissions Of Fact To Avoid Unnecessary Proof.**

The Hearing Officer discussed three methods of placing the information under discussion and the answers to the Director's questions into the evidentiary record. First, United could execute an affidavit that would contain the answers to the questions asked by the Directors and the CAD. Second, the Parties could stipulate to the information. The Hearing Officer indicated that these two methods avoid a formal Hearing. The Parties stated that they would like to avoid a Hearing because of the length of time that it would take, and they both felt that an informal procedure was more satisfactory under the circumstances. The third method discussed was the Hearing process.

United stated that it could have an affidavit to the Consumer Advocate with attachments on the issues by Noon on January 23, 1997. By January 27, United and the CAD expected that they could develop a record sufficient for the Authority to render a decision by February 17, 1998. In order for the affidavit and attachments to be delivered to the CAD, the Parties agreed that United would produce a Proprietary Agreement for the CAD's approval by Friday, January 16, 1998. The Hearing Officer requested notification of the execution of the Agreement and a copy of the executed Agreement for the docket file.

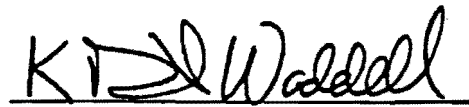
On January 27, 1998, at 11:54 P.M., the Parties filed their stipulation (Attachment 1) with affidavits (Attachments 2 and 3) and exhibits. The CAD, by and through Archie Hickerson, Director of Consumer Advocate Staff, states that the affidavit of United does not support the position that alternatives to United's Opportunity 800 Service and Optional Calling Plan Point-to-Point Service exist. Considering this statement an issue of fact remains which may be heard by the Authority. If the Directors decide that it is necessary to hear witnesses on this issue, a resuspension of the tariff until an Order is issued by the Authority is appropriate.

The Hearing Officer recommends that the difference in the statement by the CAD be considered in light of the evidence, and that the evidence be given its proper weight by the Authority. This would allow the Authority to move to a decision by February 17, the final Directors' Conference date within the tariff suspension. As a precautionary matter the

Directors may wish to inquire if any other factual disagreements have arisen in addition to the issue noted by the CAD in the affidavit of Mr. Hickerson.

Respectfully Submitted,

  
DENNIS P. MCNAMEE, GENERAL  
COUNSEL, AS HEARING OFFICER

  
K. DAVID WADDELL  
EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: UNITED TELEPHONE-SOUTHEAST, INC. )  
OBSOLETE OPPORTUNITY 800 SERVICE AND THE )  
OPTIONAL CALLING PLAN POINT-TO-POINT )  
AND GRANDFATHER SERVICE TO EXISTING )  
CUSTOMERS (TARIFF 97-262) )

Attachment 1  
98 JAN 27  
DOCKET NO. 97-01387  
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SUPPLEMENTAL STIPULATION BETWEEN  
UNITED TELEPHONE-SOUTHEAST, INC. AND  
THE CONSUMER ADVOCATE DIVISION

Comes now United Telephone-Southeast, Inc. ("United") and the Consumer Advocate Division ("CAD") and submit the following additional matters for consideration by the Tennessee Regulatory Authority in the above case.

1. United and the CAD, pursuant to a Stipulation dated December 18, 1997, previously agreed that (1) United currently provides an intraLATA 800 service which it calls Opportunity 800 Service and a discounted bulk toll optional calling plan which it calls Point to Point Service, and these services are the subject of this proceeding, (2) United has filed tariff 97-262 which proposes to "obsolete" both these services, (3) United, in making the services "obsolete", seeks to continue to provide the services to existing customers and not make the services available to new customers and (4) that United is technically able to provided such services.

2. United and the CAD have reached additional agreement and the following sets forth their supplemental stipulation.

3. Attached hereto as Attachment I is an Affidavit of Laura Sykora, together with Exhibits A through E, which Affidavit and



Exhibits the parties agree can be considered as record evidence in this case. The CAD, by such agreement, does not indicate it concurs with the statements or conclusions therein, but only consents that the Authority may consider such evidence.

4. The CAD and United further agree that the Authority may take judicial notice of United's Tariff No. 96-203, Restructure of Centrex Service in Docket No. 96-01492; AT&T's Tariff No. 97-298, Easy Reach 700 Service; MCI's Tariff No. 97-248, HotelDirect; Citizen's Tariff No. 97-059, Custom Calling Feature Package; MCI's Tariff No. 97-002, Advanced Option I and MCI's Tariff No. 96-311, copies of which documents relate to services the Authority has previously grandgathered and copies of which were attached as Attachments A through G to United's December 19, 1997 Brief.

Respectfully submitted,

UNITED TELEPHONE-SOUTHEAST, INC.

By

*1-27-98*  
James B. Wright  
James B. Wright *by Vance Duemel*

CONSUMER ADVOCATE DIVISION

By

*1-27-98*  
L. Vincent Williams  
L. Vincent Williams *by Vance Duemel*

January 27, 1998  
#13313

IN THE TENNESSEE PUBLIC SERVICE COMMISSION  
NASHVILLE, TENNESSEE

Attachment 2

IN RE: Tariff 97-262, Obsolete	)	
Opportunity 800 Service and the Optional	)	DOCKET NO. 97-01387
Calling Plan Point-To-Point and	)	
Grandfather Service to Existing	)	
Customers	)	

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AFFIDAVIT

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Comes the Affiant, Archie R. Hickerson, after being duly sworn who deposes and says:

1. That I am a Certified Public Accountant (CPA) and the Director of Consumer Advocate Staff.
2. I am responsible for supervising and coordinating the work of CPA's and others for the Consumer Advocate Division in Docket No. 97-01387.
3. I have reviewed the documents that United Telephone Southeast has filed with the Tennessee Regulatory Authority in Docket No. 97-01387 along with the January 27, 1998 affidavit of Laura A. Sykora.
4. The affidavit and the documents submitted by United Telephone Southeast do not support the position that alternatives to United Telephone Southeast's Opportunity 800 Service and Optional Calling Plan Point-To-Point Service are being provide at a competitive price within United Telephone Southeast's service in Tennessee by other telephone service providers.

Further affiant sayeth not.

Archie R. Hickerson  
Archie R. Hickerson

Subscribed and sworn before me this the 27<sup>th</sup> day of January, 1998.

Teresa A. Harris  
Notary Public

My commission expires on the 20<sup>th</sup> day of January, 1999.

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE

IN RE: TARIFF 97-262, OBSOLETE OPPORTUNITY 800 SERVICE AND THE  
OPTIONAL CALLING PLAN POINT-TO-POINT AND GRANDFATHER  
SERVICE TO EXISTING CUSTOMERS

Attachment 3

DOCKET NO.97-01387

STATE OF NORTH CAROLINA )  
COUNTY OF WAKE )

AFFIDAVIT

The undersigned, Laura A. Sykora, Senior Manager, Regulatory Affairs TN/SC, Sprint Mid-Atlantic Operations, being duly sworn, deposes and says:

1. I have prepared the following testimony for filing in the above proceeding, which testimony is true and correct to the best of my knowledge and belief.

2. United's Opportunity 800 Service is an intraLATA in-WATS service which was first tariffed in 1993.

3. United's Point to Point service is an optional toll calling plan which was tariffed in its present form in February, 1995.

4. Attached as Exhibit A-1 is a listing of the number of customers subscribing to United's Opportunity 800 Service and Point to Point Service ("Services"), as of December 1995, December 1996 and for each month in 1997. This Exhibit shows a continual decline in subscribership for both Services. Attached

as Exhibit A-2 is a list of the new customers for each service for each month in 1997.

5. United proposes that the grandfather period for these Services conclude with the effective date of price adjustments associated with its 1998 annual price regulation filing. (This filing is anticipated to be made in September 1998 with an effective date of October 15, 1998.)

6. United proposes to cease offering the Opportunity 800 and Point to Point services to new customers in view of the declining subscribership, the desire to simplify the number of toll plans available in the region for ease in dealing with customers, in order to better manage its business and to reduce marketing expense, the existence of numerous competitive alternatives stemming in part from the establishment of toll dialing parity in our area, and the desire to better utilize its resources in other areas. United believes that grandfathering will minimize disruption to our existing customers and will allow them time to transition to an alternate or substitute service to meet their telecommunications needs with no material detrimental or harmful effects to others.

7. United's Opportunity 800 Service and Point to Point Service are toll plans which are subject to competition from numerous companies in its service area. United implemented intraLATA toll dialing parity on July 21, 1997 in accordance with the TRA's orders in Docket No. 96-01235, which proceedings we ask ~~be officially noticed pursuant to TCA Section 4-5-313(6)~~. Our records indicate nearly 19,000 customers in United's operating

territory have selected an intraLATA carrier other than United. In addition to interexchange carriers such as AT&T, MCI and Sprint, attached as Exhibit B is a list of resellers certified to offer toll and/or local service in Tennessee. Attached as Exhibit C is a list of the 23 authorized competing local exchange carriers. Attached as Exhibit D is a partial list of internet service providers serving northeast Tennessee. Attached as Exhibit E are copies of sample advertisements, listings, news articles and tariffs regarding companies providing alternatives to United's Opportunity 800 and Point to Point services in United's service area.

8. During the one year period immediately prior to date the tariffs were filed to obsolete the Services, that is, from June, 1996 to June, 1997, the Company did not alter the manner in which the Services were marketed.

FURTHER AFFIANT SAYETH NOT.

  
LAURA A. GYKORA

SUBSCRIBED and SWORN to before me this 27th day of January, 1998.

  
Notary Public

My Commission expires February 20, 2000.  
#13652