

JW/Docket
Rear

BEFORE THE TENNESSEE REGULATORY AUTHORITY

April 8, 1998

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**

**ORDER APPROVING HEARING OFFICER'S
REPORT AND RECOMMENDATION FOR THE
PRE-HEARING CONFERENCE HELD NOVEMBER 25, 1997**

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on December 16, 1997, for consideration of the Hearing Officer's Report and Recommendation For The Pre-Hearing Conference Held November 25, 1997 ("Report and Recommendation"). On November 21, 1997, the Authority issued an Order re-suspending the tariff filed by United Telephone-Southeast, Inc. ("United") and directing that a contested case be convened in this matter. Further, the Authority appointed General Counsel Dennis McNamee, or his designee, to act as Hearing Officer in this matter.

On November 25, 1997, Hearing Officer Dennis McNamee convened a Pre-Hearing Conference for the stated purposes of: determining and refining the issues in the case; discussing admissions of fact to avoid unnecessary proof; discussing witnesses; and setting a procedural schedule to hearing. The Report and Recommendation was filed by the Hearing Officer on December 8, 1997 and was presented to the Directors at the December 16, 1997, Authority Conference. The Directors unanimously approved the Report and

Recommendation, noting that the proposed decision date of January 13, 1998, would be subject to change. The Directors also discussed the possibility of re-suspending the tariff beyond January 19, 1998, in the event that a decision could not issued by January 13, 1998. Counsel for United was not present at the Conference. The Consumer Advocate informed the Directors that he would contact counsel for United and that both parties would respond to the Authority concerning an agreement to re-suspend the tariff in the event additional time is required for deliberations.

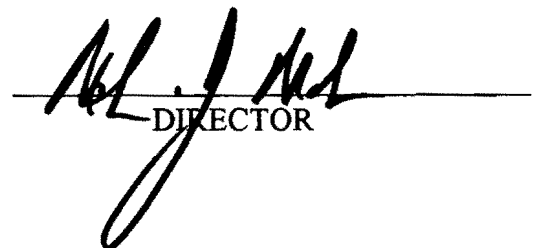
IT IS THEREFORE ORDERED THAT:

1. The Report and Recommendation filed on December 8, 1997, is hereby approved. A copy of the Report and Recommendation is attached to this Order as Exhibit A and the provisions of that Report and Recommendation are incorporated as if fully rewritten herein. Further, the proposed decision date of January 13, 1998, is subject to change by the Authority.

2. 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.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


EXECUTIVE SECRETARY

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE 8 AM 11 03

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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HEARING OFFICER'S REPORT AND RECOMMENDATION FOR THE PREHEARING
CONFERENCE HELD NOVEMBER 25, 1995

Background

This matter comes before the Tennessee Regulatory Authority ("Authority") upon the filing of Tariff number 97-262 by United Telephone-Southeast Inc., ("United") on June 20, 1997. The effective date of the Tariff was to be July 21, 1997. At its July 15, 1997, Authority Conference, the Authority suspended the Tariff for thirty days. On July 30, 1997, the Office of the Attorney General Consumer Advocate Division ("CAD") filed for leave to intervene and participate in this proceeding. The Authority granted the request of the CAD for intervention at a regularly scheduled Authority Conference held on August 19, 1997, and pursuant to a representation that sixty days would be sufficient to conclude this docket, the Authority resuspended the tariff for an additional sixty days. The sixty day suspension expired on Sunday, October 19, 1997, and the tariff became effective on Monday, October 20, 1997. On Friday, October 17, 1997, the CAD filed a Petition to Continue Suspension and to Impose Penalty.

The Authority considered the CAD's request for a continued suspension of the Tariff at a regularly scheduled Authority Conference held on November 4, 1997. The Authority found that the CAD had filed its petition to continue the suspension prior to the expiration of the previous sixty day suspension period and that United would suffer no immediate significant or irreparable harm by a continuation of the suspension of its tariff. The Authority further found that, in styling its initial petition for intervention as a petition or complaint, the CAD had filed a complaint which necessitated the convening of a contested case proceeding. Whereupon, the Authority convened a contested case

proceeding in this docket, directed the General Counsel or his designee to act as Hearing officer and suspended the tariff for an additional ninety (90) days. If the ninety day suspension period expires on a weekend, the Authority directed the suspension of the tariff through the next business day following the weekend (January 19, 1998). In addition, the Authority found no evidence to support the Consumer Advocate's request to impose a penalty against United and denied that request for relief.

A Pre-Hearing Conference was held on November 25, 1997, in the Hearing Room of the Authority at 9:30 A.M., to determine and refine the issues in the case, discuss admissions of fact to avoid unnecessary proof, to discuss witnesses, and set a procedural schedule to Hearing. General Counsel Dennis McNamee presided as Hearing Officer. United participated in this Pre-Hearing Conference by telephone. Appearances in the proceeding were entered by the following:

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

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

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

Item One: Determining a Statement of Issues.

Although both Parties to this Proceeding were invited to submit their issues in writing to the Hearing Officer prior to the Pre-Hearing Conference, neither chose to do so. United did, however, send a letter for the docket instructing the Authority that its issues had been previously discussed in response to the Consumer Advocate's pleadings. At the Pre-Hearing Conference United expressed its only issue as being "Grandfathering."¹ Counsel for United stated that a clear expression of this issue was presented in their pleading styled as Objection To (the) CA(D)'s Petition To Continue Suspension. I have attached a copy of that "Objection" to this Report for your reference.

The CAD characterized its issue as "Discrimination,"² and further elaborated that United's Tariff proposes directly or indirectly to unjustly discriminate in violation of T.C.A. §§ 65-4-122, 65-5-204, 65-5-209, 65-5-110, 65-21-106 and 65-21-109, and makes unreasonable preferences in violation

¹ United, however, did not list any preemptive contract issues under Article 1 § 10 of the United States Constitution, and Article 11, Section 8 of the Constitution of Tennessee, inherent in providing service to customers who previously have established a contract for service.

² In relation to his issues the CAD did not discuss permissible class discrimination in the equal protection provisions of either the Fourteenth Amendment to the United States Constitution, or Article 11, Section 8 of the Constitution of Tennessee, based on vested property rights.

of T.C.A. § 65-5-112. The CAD further stated that United proposed to prevent new customers from qualifying for, purchasing and using services at the same rates as other customers.

The Hearing Officer recommends to the Authority that the legal issues to be addressed involve the enabling statutes of the Authority and also Constitutional law at both the State and Federal levels. The CAD stated at the Pre-Hearing Conference that the issues in this case were only legal except for one limited fact pattern, discussed as the subject for a suggested stipulation in the next section. United agreed and both Parties advised the Hearing Officer that briefing the issues of "Grandfathering" and "Discrimination" would be the most appropriate manner to approach this case. Therefore, the Hearing Officer recommends that the Authority require that both Parties research, brief and orally present the legal issues at all levels in a comprehensive manner.

Item Two: Admissions Of Fact To Avoid Unnecessary Proof.

The Parties agreed at the Pre-Hearing Conference to stipulate in writing that United has the technology to continue to offer both the *Opportunity 800* and the *Point to Point* services which are the subjects of this proceeding even after the services would be discontinued under the Tariff. This is the only fact pattern at issue in the proceeding and is the one referred to in *Item One: Determining a Statement of Issues*. The Consumer Advocate made the offer to United to draft a sample stipulation by December 4, 1997, for circulation and consideration.. This stipulation, when executed, will be filed not later than December 22, 1997.

Item Three: The Discussion of Witnesses.

Because the Parties agreed to stipulate the only fact in this proceeding and present the legal issues through an oral argument and in briefs there was no discussion of witnesses.

Item Four: Procedural Schedule:


The Parties have represented to the Hearing Officer that the procedural schedule in this proceeding only requires the scheduling of the briefs and reply briefs plus the stipulation schedule, and a Hearing for Oral Arguments on the legal issues. As a result the following schedule is recommended to the Authority:

December 4, 1997	Stipulation draft circulated by facsimile to United
December 22, 1997	Briefs due on the legal issues
December 22, 1997	Stipulation from the Parties due
January 2, 1998	Reply briefs due on legal issues
January 6, 1998	Hearing and oral arguments before the TRA
January 13, 1998	Decision by the TRA

The Hearing Officer further recommends to the Authority that the oral arguments by the Parties be limited to thirty (30) minutes and be heard in a proceeding immediately following the Authority Conference scheduled on January 6, 1998.

The Parties were advised that all submissions were due in the Office of the Executive Secretary of the Authority not later than 12:00 P.M. (Noon) on the date referenced in this Report, and that except as noted in the schedule, facsimiles will not be accepted.

Respectfully Submitted,


Dennis P. McNamee, General Counsel, as
Hearing Officer

ATTESTED to this Date 12/8/97:


K. David Waddell

EXECUTIVE SECRETARY

Attachment

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: TARIFF 97-262 OBSOLETE)	
OPPORTUNITY 800 SERVICE AND THE)	
OPTIONAL CALLING PLAN POINT-TO-)	DOCKET NO. 97-01387
POINT AND GRANDFATHER SERVICE TO)	
EXISTING CUSTOMERS)	

UNITED TELEPHONE-SOUTHEAST, INC. OBJECTION TO
CA'S PETITION TO CONTINUE SUSPENSION

United Telephone-Southeast, Inc. ("United") files the following objection to the Consumer Advocate Division's ("CA's") Petition to Continue Suspension and to Impose Penalty against United ("Motion") regarding the above captioned tariff.

United objects to the CA's Motion first on the basis of its untimeliness. The complained of tariff was filed by United on June 20, 1997. On July 20, 1997 the CA petitioned to intervene, which intervention was granted by the Authority at its August 19, 1997 Agenda Conference. At the same Agenda Conference the Authority suspended United's tariff for 60 days to October 19, 1997 (a Sunday). The Company had responded to requests for information from the Staff; however, the CA did nothing further until its instant Motion was filed on Friday afternoon, October 17, 1997 at 4:00 p.m.

As a constant practitioner before this Authority, the CA is well aware of the status of tariff's filed by United. One such source of information is the Authority's publicly distributed Tariff/PGA Information Sheet. Attached is a copy of the October 3, 1997 Tariff Sheet which clearly shows the status of United's Tariff 97-262 and the dates of its suspension.

Since the CA constantly appears before this Authority, he is also fully aware that the Authority's last scheduled Agenda Conference before the lapse of the suspension was on October 14, 1997.

Nonetheless, the CA elected to remain silent for two months with full knowledge that any motion or other pleading seeking relief that was filed later than October 13, 1997 would require either a special meeting of the Directors or run the risk of not being acted upon.

By waiting until the last possible moment to file its pleading (which was 4:00 p.m. of the last business day before the tariff could go into effect), the CA effectively made certain that the Authority would not have any reasonable amount of time to act on its Motion.

United itself is disadvantaged by such a cavalier attitude. United attended the last scheduled Agenda Conference before the suspension was to end; no action was taken by the Authority on October 14; and as a consequence the Company in good faith prepared to implement a tariff it had every reason to believe was to become effective without objection. United did in fact place the tariff into effect after the suspension expired effective October 21, 1997. Accordingly, for these reasons alone, the Motion should be denied.

There are additional grounds for United's opposition to the CA's Motion. The CA apparently objects to a grandfathering provision in the tariff. United does intend to continue to provide the services to existing customers, that is to customers

who were subscribers of United's services at the time the services were obsoleted. The CA alleges that this provision 'extorts consumers by preventing new consumers from qualifying for, purchasing and using services at the same rates as other customers'.

The Company would note that with respect to its Opportunity 800 Service (United's intraLATA 800 service offering), United has no plans to offer an intraLATA 800 or equivalent service in the future. United will continue to provide the obsoleted service to customers who previously subscribed. If one accepts the CA's argument that grandfathering existing subscribers is unfair, one of two consequences must occur. United must either immediately discontinue service to its existing customers with the consequence that they may or may not obtain acceptable alternative/equivalent services from intraLATA competitors; or United must continue to offer the service, which means United could never discontinue offering a service. Both of these results are unsupportable as a matter of public policy or as a matter of law. The CA has simply taken a position which is contrary to the very "interests of Tennessee consumers" he purportedly represents if he forces United to drop the service for customers who previously and currently want the service.

United would note that in the federal jurisdiction, the Company filed to obsolete the interstate equivalent to its Opportunity 800 Service and to similarly grandfather its existing customers, which filing was approved by the FCC on August 4, 1997.

United would note lastly that this Authority, and its predecessor regulatory agency, has previously permitted customers to be grandfathered when services were obsoleted. This Authority permitted such grandfathering with respect to United's ABC Service in Docket No. 96-01492.

For all of the above reasons, United asks that the CA's Motion be denied in its entirety.

Respectfully submitted,

UNITED TELEPHONE-SOUTHEAST, INC.

By James B. Wright
James B. Wright
Senior Attorney
14111 Capital Boulevard
Wake Forest, NC 27587-5900

October 27, 1997

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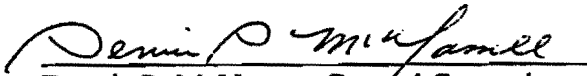
Tariff/PGA Information Sheet

03-Oct-97

Tariff Number	Company Name	Effective Date	Caption	Conference Date	Comments
96-487	BELLSOUTH	3/1/96	DELETE THE EXISTING COUNTY-WIDE CALLING SWITCHED ACCESS CREDIT TO INTEREXCHANGE CARRIERS FOR INTERLATA INTRA-COUNTY CALLS		STATED BY COURT 2/21/96 UNDER FCC DOCKET 94-23414
96-488	BELLSOUTH	3/1/96	IMPLEMENT RATE REDUCTIONS AS ORDERED BY THE COMMISSION UNDER DOCKET 94-23414		STATED BY COURT 2/21/96 UNDER FCC DOCKET 94-23414
96-177	BELLSOUTH	10/2/96	LIMIT THE NUMBER OF RESIDENCE SERVICE LINES PER LOCATION TO TEN (10)	01/30/97 94-4143 AC 10/2/96, 01/30/97; SET FOR PRE-HEARING 01/30/97	
96-245	WIRE	10/15/96	REFLECT THE ANNUAL PRICE CAP ADJUSTMENT.	02/09/97 94-4143 AC 10/15/96, 11/30/96, 9/4/97, 01/30/97, 01/30/97; HEARD 01/30/97; Awaiting ORDER	
97-079	LORETTA	01/1/97	REVISE THE TARIFF PAGE FORMAT		
97-095	LORETTA	01/1/97	RESTRUCTURE PARTS I AND II OF ITS TARIFF.		
97-177	UNITED TELEPHONE OF THE SOUTHEAST	01/1/97	PROVIDES PHYSICAL AND VIRTUAL COLLOCATION SERVICES PER SECTION 251 OF THE TELECOMMUNICATIONS ACT OF 1996 AND FCC ORDER 94-323	7/29/97 97-0182, APPROVED DURING THE 7/29/97 CONF., Awaiting ORDER	
97-214	AT&T	3/1/97	IMPLEMENT THE PER-AC PAYPHONE SURCHARGE IN COMPLIANCE WITH FCC ORDER UNDER DOCKET 94-128	3/1/97 97-0125; REOPENED THE 11/26/97	
97-340	UNITED TELEPHONE SOUTHEAST	12/1/97	OBSOLETE OPPORTUNITY 888 SERVICE AND THE OPTIONAL CALLING PLAN POINT-TO-POINT AND GRANDFATHER SERVICE TO EXISTING CUSTOMERS.	01/09/97 CA HAS INTERVIEWED. SCHEDULED ADDITIONAL 60 DAYS 01/31/97	
97-363	SPRINT	01/1/97	RESTRUCTURE RATE PERIODS FOR SPRINT SERVICE, FUMCARL AND OPERATOR SERVICE CALLS MADE BY RESIDENTIAL CUSTOMERS	02/23/97	
97-389	MCI	07/97	CORRECTS THE RATE FOR BASIC CALLING CARD AND REDUCES THE RATES FOR MCI VISION POWER RATE CARD ACCESS	07-0143	
97-314	TIME WARNER	06/97	CANCEL A PROMOTIONAL OFFERING		
97-330	SPRINT	11/1/97	RESTRUCTURE SPRINT SERVICE FORWARD CHARGE RATES AND SURCHARGES		
97-338	SIXTILINK	01/01/97	TO CORRECT A TYPOGRAPHICAL ERROR		
97-347	LORETTA TELEPHONE COMPANY	11/1/97	TO OFFER LINE-UP AND LIFELINE SERVICES		
97-348	CLAURORE TELEPHONE COMPANY	10/1/97	TO INTRODUCE DIGITAL TRUNK SERVICE		
97-349	COULTWASH TELEPHONE COMPANY	10/1/97	TO INTRODUCE DIGITAL TRUNK SERVICE		
97-353	SPRINT	10/1/97	TO INTRODUCE THE PAYPHONE SERVICE CHARGE	07-0143	

CERTIFICATE OF SERVICE

I, Dennis P. McNamee, hereby certify that a true and exact copy of the foregoing has been served on counsel of record and other interested parties via First Class Mail postage prepaid this 8th day of December, 1997.


Dennis P. McNamee, General Counsel as
Hearing Officer

L. Vincent Williams, Esq.
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