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June 28, 1999

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *United Telephone-Southeast, Inc. Tariffs to Reflect Proposed Changes Under Price Regulation Plan*
Docket No. 98-00626

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Post Hearing Brief. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Guy M. Hicks

GMH:ch
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *United Telephone-Southeast, Inc. Tariffs to Reflect Proposed Changes Under Price Regulation Plan*

Docket No. 98-00626

**BELLSOUTH TELECOMMUNICATIONS, INC.'S POST-HEARING BRIEF**

## I. INTRODUCTION

BellSouth Telecommunications, Inc. ("BellSouth") respectfully submits this post-hearing brief in support of United Telephone-SouthEast, Inc.'s ("United") 1998 price regulation filing and in opposition to the positions espoused by the Consumer Advocate Division ("CAD").

As explained below, the calculations set forth in United's price regulation filing are based upon and are fully consistent with the stipulated methodology agreed to by the CAD and approved by the Tennessee Regulatory Authority (the "Authority") for the purpose of calculating maximum annual price adjustments permitted under T.C.A. § 65-5-209(c) ("the Stipulated Methodology").

The CAD, the only entity opposing United's filing in the hearing, has raised three issues.[1] First, while acknowledging that the Stipulated Methodology is consistent with § 65-5-209, the CAD argues that price-regulated companies must increase prices in the same year in which the event giving rise to the increase occurs or forever lose the ability to make any such adjustment. As explained below, the CAD's "use it or lose it" position is based upon erroneous interpretations of both T.C.A. § 65-5-209 and the Stipulated Methodology, and it is contrary to the public interest. The CAD also argues that United's filing is somehow flawed because it

allegedly fails to take into account the removal of pay telephone subsidies from its rates. Even putting aside for the moment the fact that the Authority will address the payphone subsidy issue in a separate proceeding, the discussion below explains that there is no basis for the CAD's claim.

## II. BACKGROUND

On October 15, 1995, the Tennessee Public Service Commission approved United's price regulation plan and established United's initial rates under its plan pursuant to T.C.A. § 65-5-209(c). In 1996, United made its first proposed price changes under price regulation. A contested case was convened and Issue 1 (Docket No. 96-01423) was determined to be "[H]ow is the maximum annual adjustment permitted under T.C.A. § 65-5-209(e) calculated?" (Exhibit CSP-A, Parrott Rebuttal) This issue was settled by agreement of the parties to that proceeding, which included United, the CAD, Citizens, AT&T and BellSouth. The parties entered into a joint stipulation setting forth the methodology and formula to be applied in calculating the maximum annual price adjustments pursuant to T.C.A. § 65-5-209(e) (Exhibit CSP-1, Parrot Direct). The Hearing Officer polled the parties to verify their agreement to the Stipulated Methodology, and although the Hearing Officer gave the CAD the opportunity to withdraw its agreement, the CAD declined the opportunity and continued to agree to the Stipulated Methodology.

The Stipulated Methodology was approved by the Authority in its Final Order entered in United's 1996 case on September 4, 1997. (Exhibit CSP-2, Parrott Direct) The CAD appealed certain aspects of the Authority's Order approving United's 1996 price adjustments, but the CAD did not seek review of or otherwise challenge the TRA's approval of the Stipulated Methodology

[1] BellSouth's post-hearing brief will not address Issue No. 2, which involves whether United's 1998 filing appropriately dealt with certain base fee revenues under a directory agreement with an affiliate.

to which the CAD itself had agreed. In 1997, the Stipulated Methodology was again used by United, at the direction of the Authority, to calculate United's price adjustments. (Exhibit CSP-3, Parrott Direct) United's 1998 price adjustments, which are the subject of this proceeding, were also calculated pursuant to the Stipulated Methodology. (Hearing Officer's Report of April 16, 1999, p. 4, footnote 6)

On September 28, 1998, the CAD filed a Complaint or Petition to Intervene in opposition to United's filing. On January 29, 1999, BellSouth petitioned the Authority for leave to intervene in support of United's price regulation filing. Both petitions were granted by the Authority.[2] On November 18, 1998, United put the rates it proposed in its 1998 filing into effect pursuant to the terms of an agreement reached with the CAD. Following completion of the discovery cycle and the submission of pre-filed testimony, a hearing was conducted before the Authority on May 13, 1999.

## III. DISCUSSION

### A. UNITED'S 1998 PRICE REGULATION FILING COMPLIES WITH THE TRA'S STIPULATED METHODOLOGY FOR PRICE ADJUSTMENTS UNDER T.C.A. § 65-5-209(e).

#### 1. The Plain Language of § 65-5-209 Forecloses the CAD's All-Encompassing "Use It Or Lose It" Argument.

Section 65-5-209(e) establishes a clear and concise general rule governing United's ability to increase its rates. Under this statute, United "may adjust its rates" for basic and non-basic services

> so long as its aggregate revenues for basic local telephone services or non-basic services generated by such charges do not exceed the aggregate revenues generated by the maximum rates permitted by the price regulation plan.

[2] Pursuant to T.C.A. § 4-5-310(c), the Authority granted the CAD's petition to intervene, but limited his intervention to issues arising from this proceeding. The CAD had sought to inject certain matters in this proceeding, including Directory Assistance and the "5 line tariff", which had already been litigated before the Authority.

T.C.A. § 65-5-209(e) (emphasis added). United, therefore, "may" implement a rate increase or it "may" decide not to implement a rate increase in any given year. When it decides to implement a rate increase, United may charge rates that generate the aggregate revenues that would have been generated if United had taken advantage of the "maximum rates permitted" by the plan. Thus, in any given year, United may charge prices that generate the maximum aggregate revenues that would have been generated had United implemented each permissible rate increase in each year of its plan.

Clearly, the general rule created by this statute permits United to accumulate "headroom" by deferring rate increases to which it is entitled to later years. This general rule also permits United to utilize this accumulated headroom by adjusting its basic and/or non-basic rates. In fact, the legislature clearly limited the only exception to this general rule to residential basic service. Section 65-5-209(f) provides that after the expiration of the four-year freeze on the rates for basic services, United

> is permitted to adjust annually its rates for basic local exchange telephone services in accordance with the method set forth in subsection (e) provided that in no event shall the rate for residential basic local exchange telephone service be increased in any one (1) year by more than the change in inflation from the preceding year.

T.C.A. § 65-5-209(f)(emphasis added). Thus, while United's ability to raise basic residential rates is limited by the change in inflation from the preceding year, there is no "year-over-year" limitation on rate increases for basic business services or non-basic services. In light of this straightforward legislative mandate that the "year-over-year" limitation applies only to rates for basic residential services, the CAD's "use it or lose it" argument in this docket is little more than an improper attempt to have the exception swallow the rule.

Finally, if § 65-5-209(e) incorporated the "year-over-year" limitation (as the CAD erroneously argues it does), the provision in § 65-5-209(f) creating an exception to the "method

set forth in subsection (e)" would be meaningless and unnecessary. A "year-over-year" limitation cannot be read into § 65-5-209(e), therefore, because basic principles of statutory construction prohibit a construction of a statute that renders words in the statute meaningless or unnecessary. *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn. App. 1995) (holding that "court has duty to construe statutes so that no part will be inoperative, superfluous, void or insignificant."). United, therefore, may accumulate headroom from both basic and non-basic services, and the price regulation statutes do not limit its ability to utilize its aggregate accumulated headroom to increase rates for basic business services or for non-basic services.

### 2. The Terms of the Stipulated Methodology to Which the CAD Agreed Foreclose the CAD's "Use It Or Lose It" Argument.

As pointed out by United's witness, Mr. Steve Parrott, the Stipulated Methodology itself, when describing the calculation of aggregate revenues or the service price index ("SPI"), uses the expression "cumulative annual percentage change ... since the effective date of price regulation." (Stipulated Methodology, Section III(D), CSP-1, Parrott Direct) Indeed even Mr. Buckner, the CAD's witness, testified that the Stipulated Methodology "establishes the method of determining the cumulative percentage increases and the maximum cumulative increase allowed over a period of years assuming that rates are increased the maximum allowed each year in accordance with T.C.A. § 65-5-209." (Emphasis added.) (Buckner, Testimony at p. 4). In effect, while acknowledging that the SPI should be based on cumulative increases allowed over a period of years, the CAD nonetheless maintains that the inflation index, or PRI, should not be calculated on a cumulative basis. Under the CAD's approach, therefore, there would be an "apples to oranges" comparison between a cumulative SPI and a non-cumulative PRI.

United presented comprehensive testimony and work papers in support of its 1998 filing. (Exhibits CSP-4, CSP-5, CSP-6 and CSP-7, Parrott Direct.) Mr. Parrott testified at length during

the hearing, explaining the basis for United's calculations of the PRI and SPI and showing how each calculation complies with the Stipulated Methodology.[3] (Transcript, p. 79-84.) Mr. Parrott also testified that United's 1998 filing was consistent with price regulation filings made by United in prior years.[4] (See Transcript from May 13, 1999 Hearing at p. 96-97, hereinafter "TR., p. ___".)

In contrast, the only evidence submitted by the CAD in opposition to United's price regulation filing was the direct testimony of Mr. Robert T. Buckner. This testimony consisted of a mere seven pages and two calculations, set forth in Exhibits B and C to the testimony. During the hearing, Mr. Buckner conceded that these calculations are neither credible nor relevant.

In response to a question from Director Greer, for example, Mr. Buckner conceded that the CAD's first calculation, set forth in Attachment B, was merely "informational" and does not comply with the Stipulated Methodology. (TR., p. 231). The CAD's only other calculation, set forth in Exhibit C, purports to show an SPI of 101.23%.[5] Mr. Buckner, however, conceded that none of the numbers used to make this calculation reflected actual United data. All of the numbers were merely hypothetical.[6] (TR. pp. 212, 218, 219) Ultimately, Mr. Buckner conceded that the CAD made no SPI calculation "as such." (TR., p. 222).

Mr. Buckner further acknowledged that the Stipulated Methodology did not conflict with § 65-5-209 (Buckner, Direct at p. 3), but took the position that the Stipulated Methodology assumes the "use it or lose it" approach. The CAD, however, provided no evidence whatsoever that the parties to the Stipulated Methodology, or the Authority for that matter, made any such

[3] The CAD agrees that United's 1998 PRI calculation of 100.29 percent is correct. (TR. at 217).

[4] In response to a question from Director Greer as to whether or not there were any differences between United's 1998 filing and its previous price adjustment filings, Mr. Parrott testified that the only difference related to improvement in the level of detail of the data United had available for its 1998 filing. (TR., pp. 96-97)

[5] Mr. Buckner testified that the only basis for his SPI calculation was Exhibit C. (TR. p. 218)

[6] To cite but one example of these hypothetical numbers, the CAD assumed, without any factual support, an improbable increase from 1,000 to 3,100 units of a service in only two years. (TR. at 219).

assumption.[7] Indeed, while arguing that the parties to the Stipulated Methodology and, by implication, the Authority, made such an assumption, Mr. Buckner candidly admitted that he was "not really familiar with the methodology" and that he "wasn't involved in any of the negotiations and how it was drawn up ..." (TR., p. 214-215).

Additionally, the express language of the Stipulated Methodology demonstrates that no such "assumption" was made. Section III(C) states that "the PRI for subsequent years shall be calculated as described in IV (G) below." Section IV (G) provides that the price regulation index is calculated using the then-current value of the PRI for the company. It would be nonsensical to incorporate the phrase "the then-current value" if, as the CAD suggests, the intent was to always use 100 as the PRI value. Additionally, the Stipulated Methodology, when describing the calculation of the aggregate revenues or SPI, incorporates the language "cumulative annual percentage change ... since the effective date of price regulation." Section III(D). Again, it simply defies logic to suggest that the SPI requires the use of cumulated revenues but the PRI index does not.

Mr. Buckner acknowledged that his "assumption" was not expressly set forth in the Stipulated Methodology and that his only basis for arguing that the assumption existed was the reference in the Methodology to an "annual filing." (TR., p. 210). As pointed out by United, there is no requirement in the Stipulated Methodology that annual price adjustments be made. Annual filings to recalibrate the PRI and SPI indices can be made independent of any price adjustment. Indeed, in 1997 United made a filing to update these indices but sought no rate

[7] Rather than relying on the narrative language of the Stipulated Methodology itself, the CAD tried repeatedly and without success during its cross-examination of Mr. Parrott to argue that because a sample calculation set forth on Attachment B to the Stipulated Methodology referred to a PRI of 100, that a PRI for 100 should be used in all future calculations. Mr. Parrott pointed out that Attachment B itself stated that it was a calculation for the 1996 PRI calculation and that the current PRI in the 1996 filing would have had to have been 100 because it was United's first price adjustment filing. Indeed, the title at the top of page 1 of Attachment B is "1996 PRI calculation." (TR., p. 99) (Attachment B, p. 1 of 2 to Exhibit CSP-1, Parrott Direct)

adjustment. (TR., p. 130). Mr. Buckner's purported basis for this "assumption," therefore, is erroneous.

### 3. Sound Public Policy Forecloses the CAD's "Use It Or Lose It" Argument.

From a public policy perspective, the CAD's position is also flawed. The CAD urges the Authority to construe the Stipulated Methodology in a manner that does not permit cumulative changes, but instead requires that all price adjustments be taken immediately. The CAD fails to recognize that allowing a company to defer a permitted price increase to a later time benefits consumers because price adjustments are made on a prospective basis. (Parrott, Transcript at 192.) For example, if a price-regulated company was permitted under the Stipulated Methodology to increase rates one percent per year in three successive years, a consumer would pay less assuming a three percent increase in year three than he would assuming three one percent increases. From the company's perspective, if the company elected to defer its first-year increase into year two, it will have lost the ability to recover the one percent increase during the first year. Moreover, in year three, the consumer would pay the same rate under either scenario, but in years one and two the consumer would pay more if the CAD's position was adopted.

## B. SECTION 276(B)(1)(b) OF THE 1996 FEDERAL TELECOMMUNICATIONS ACT AND THE FCC ORDERS REGARDING THE REMOVAL OF PAY TELEPHONE SUBSIDIES IN DOCKET 96-128 DO NOT AFFECT UNITED'S PRICE CAP ANNUAL INDEX AND REVENUES.

Section 276(b)(1)(B) of the Telecommunications Act of 1996 requires United to "discontinue . . . payphone subsidies from basic exchange and exchange access revenues . . . ." United has complied with this mandate by reducing intrastate switched access rates by the amount of such subsidies pending the outcome of Docket No. 97-00409 (*Tariff Filings Regarding the Reclassification of Pay Telephone Service as Required by FCC Docket 96-128*).

The CAD argues that in addition to complying with the FCC's order implementing Section 276 of the *federal* act, United must also recalculate the initial rates of its price regulation plan governed by *state* law. Nothing in Tennessee law supports the CAD's argument.

Section 65-5-209 establishes a rule, and it provides one limited exception to that rule. The rule is very clear: "Rates established pursuant to [the process outlined in 65-5-209(c)] *shall be the initial rates* on which a price regulation plan is based . . . ." T.C.A. §65-5-209(c) (emphasis added). The one limited exception to this rule is that these initial rates are "subject to such further adjustment as may be made by the authority *pursuant to §65-5-207.*" *Id.* (emphasis added). The payphone issue the CAD improperly attempts to inject into this proceeding has nothing to do with either universal service issues generally or with the provisions of section 65-5-207 specifically. State law, therefore, simply does not permit the CAD to seek adjustments to United's initial rates in this proceeding.

## IV. CONCLUSION

United's 1998 price regulation filing complies with the Stipulated Methodology and should be approved by the Authority.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 28, 1999, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:

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