Tennessee Telecommunications Association

226 CAPTIOL BOULEVARD, SUITE 212 NASHVILLE, TN 37219 P: 615.256.8005 F: 615.244.4803 E: tta@dtccom.net

December 20, 1999

VIA HAND DELIVERY

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: *In Re: Area Code Conservation Measures in Tennessee*
Docket No. 99-00784

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Tennessee Telecommunications Association's Motion for Rehearing and Reconsideration of the "Request to North American Numbering Plan Administrator to Develop An Industry Voluntary Allocation Plan and Provide Periodic Reports to the Tennessee Regulatory Authority on NXX Code Requests."

Very truly yours,

Ellen Bryson

Ellen Bryson
Executive Director

Enclosures

Cc: TTA Board Members

FILE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:	)	
	)	
AREA CODE CONSERVATION	)	**DOCKET NO. 99-00784**
MEASURES IN TENNESSEE	)	

TENNESSEE TELECOMMUNICATIONS ASSOCIATION'S MOTION FOR REHEARING AND RECONSIDERATION OF THE "REQUEST TO NORTH AMERICAN NUMBERING PLAN ADMINISTRATOR TO DEVELOP AN INDUSTRY VOLUNTARY ALLOCATION PLAN AND PROVIDE PERIODIC REPORTS TO THE TENNESSEE REGULATORY AUTHORITY ON NXX CODE REQUESTS"

Pursuant to T.C.A §65-2-114 and T.C.A. §4-5-317, the Tennessee Telecommunications Association ("TTA") respectfully submits this Motion for Rehearing and Reconsideration of the "Request to North American Numbering Plan Administrator to Develop an Industry Voluntary Allocation Plan and to Provide Periodic Reports to the Tennessee Regulatory Authority on NXX Code Requests" ("Request") issued by the Tennessee Regulatory Authority ("TRA") on December 10, 1999. The TRA should grant this motion because the TTA had no notice of or access to a document which formed the basis of findings that were presented to the Directors during the Conference. Moreover, no evidence of record supports the timeframes referenced in the Request, and the NXX allocation plan suggested in the Request will inhibit competition in the telecommunications markets in the State of Tennessee. Finally, both the industry and the public will benefit from an Order: (a) requesting the North American

Numbering Plan Administrator ("NANPA") to advise the TRA and the industry of the current exhaust status and the need for a relief plan for the 901 area code; and (b) adopting an overlay relief plan for the 615 area code.

A. The TRA should reconsider its Request or open this docket for rehearing because the TTA did not have access to a letter which formed the basis of findings that were presented to the Directors during the Conference.

During the December 7, 1999 Conference, the Directors considered a matter of miscellaneous business regarding 615 Area Code relief.[1] In the process, findings based on a letter from NANPA dated December 2, 1999 were presented to the Directors. *See, e.g.*, Transcript of December 7, 1999 Directors' Conference (Tr.) at 61 ("several carriers have responded and have returned NXX codes back to the NPA (sic). And as a result of that, and also as a result of the lower usage over the past several months, our analysis[2] reveals that it is not necessary at this time for the Authority to adopt a relief plan for the 615 area code. This was supported by a communication the Authority received on December the 2nd from New Star (sic), which is NPA (sic), which it stated in the letter to the Authority that a relief plan was not necessary at this time.") (emphasis added); Tr. at 63

[1] Although this item of business was announced as "615 Area Code Relief," the Request addressed both the 615 and 901 area codes.

[2] The TTA assumes that the "analysis" that is referenced is the December 2, 1999 letter.

("According to the NPA (sic) letter dated December the 2nd, they state that the 41 codes have been returned in the 615 area code.") (emphasis added). A copy of this letter is attached as Exhibit A.

Unfortunately, the TTA was not privy to the December 2, 1999 letter referenced during the December 7 Conference until the afternoon of December 7 -- after the Conference was concluded. Two days later, on December 9, 1999, the TTA received an e-mail from NANPA stating that "[t]he letter sent by Sandy Tokarek, NANPA Senior Relief Planner, to the Tennessee Regulatory Authority (TRA) regarding a change in the projected exhaust of the 615 NPA is now available for download." (*See* Exhibit B) (emphasis added). Although this e-mail states that "there is a typographical error in the date of this letter" and that the "letter was sent to the TRA on Friday December 3 and was received there on Monday December 6," the TTA had no notice of or access to this letter prior to the references to the letter during the December 7, 1999 Conference.

The TTA, therefore, had no access to a document which obviously formed the basis for findings that were presented to the Directors during the Conference. The TTA has since obtained a copy of this document and would like the opportunity to address the findings that were presented to the Directors and the Request in light of the contents of this letter. The TTA, therefore, respectfully submits that procedural fairness dictates that this

matter be reconsidered or reheard. *Cf. Tennessee Consumer Advocate v. Tennessee Regulatory Authority*, 1997 WL 92079 at *2 (Tenn. Ct. App. 1997) (copy attached) (noting that parties should have access to "all evidence considered by the Commission" as a matter of "procedural fairness in respect to notice of the matter to be considered").

B. The record does not support a finding that the life of the 615 area code can be extended until the fourth quarter of 2003.

The Request asks NANPA to "conduct a meeting of all Tennessee telecommunications service providers for the purpose of developing an industry voluntary allocation plan for NXX code assignment in the 615 and 901 area codes, with the objective of the plan to extend the life of both the 615 and 901 area codes until the fourth quarter of 2003, at a minimum." Request at 1 (emphasis added). The December 2, 1999 letter from NANPA, however, states that "the 615 area code is now projected to exhaust in the first quarter of 2003." Letter at 1 (emphasis added). The TTA, therefore, is unaware of any evidence of record suggesting that the 615 area code is projected to last until the fourth quarter of 2003. Additionally, a projected life of the 615 area code extending throughout 2002 is "based on current assumptions," and the actual life of the code "can fluctuate as we've seen over the past several years. It can fluctuate dramatically." Tr. at 64. The TTA, therefore, respectfully submits that nothing in the record before the TRA suggests that

the 615 area code can survive as long as the TRA's Request suggests it can.

C. The request for NXX code rationing at the rate of five per month is inconsistent with Tennessee's public policy of fostering competition in all telecommunications services markets without unreasonable prejudice or disadvantage to any telecommunications services provider.

The Request's suggestion "that the NXX code assignment allocation [for the 901 and 615 area codes] be limited to five (5) per month," (*see* Tennessee Regulatory Authority, December 10, 1999 Order at 5), is inconsistent with Tennessee public policy of fostering competition in all telecommunications services markets without unreasonable prejudice or disadvantage to any telecommunications services provider. *See* T.C.A. §65-4-123. Within a given rate center, NXX codes are allocated to ILECs, CLECs, and wireless providers. In addition to the multitude of ILECs, CLECs, and wireless providers currently providing or currently authorized to provide services in Tennessee, at least 24 applications for certification to provide wireline services in Tennessee are pending before the TRA. Many more are certain to be filed between now and the fourth quarter of 2003.

Under the TRA's request, however, only five NXX codes per month for each of the next thirty-six months would be available to these numerous competitors. In the absence of a jeopardy

situation,[3] arbitrarily limiting the number of NXX codes available to these various competitors to five per month for the next thirty-six months may unnecessarily limit the number of NXX codes competitors may use to enter new markets, expand their existing markets, and otherwise compete with one another. This limitation, therefore, is inconsistent with the legislative directive to foster competition in all markets without unreasonable prejudice or disadvantage to any telecommunications service provider.

Additionally, the FCC -- the entity to which Congress delegated numbering plan administrations responsibilities -- has stated that "the rationing of NXX codes should only occur when it is clear that an NPA will run out of NXX codes before implementation of a relief plan." *See* Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717, Memorandum Opinion and Order on Reconsideration FCC 98-224, NSD File No. L-97-42, CC Docket No. 96-98 (rel. Sept. 28, 1998) ("FCC Order") at ¶24. The FCC also has stated that efforts o extend the life of an area code "should not put carriers in the position of having no numbers and therefore being unable to serve customers." *Id.* at ¶38. Thus federal policy, like Tennessee's policy, disfavors rationing

[3] A jeopardy situation exists "when the forecasted or actual demand for NXX resources will exceed the known supply during the

efforts that limit the availability of NXX codes to competitors in order to avoid making a decision on area code relief. *See* FCC Order at ¶25.

Finally, the TRA's request is workable only if every wireline and wireless service provider operating in Tennessee over the next thirty-six months voluntarily commits (and continues to abide by its commitment) to a limitation of NXX code assignments to five per month. If any current or future wireless provider, CLEC, or ILEC is dissatisfied with the allocation of NXX codes in any given month, that provider may request additional codes from NANPA, and NANPA has no authority to deny such a request. *C.f.* FCC Order at 14 ("The code administrator assigns codes on a first-come, first-served basis, unless a jeopardy condition exists."). Such a request easily could create an impending jeopardy situation almost overnight, and the TRA would have no authority to prohibit such a request. *See* FCC Order at ¶25 ("A state commission may order rationing only if it has ordered relief and establish an implementation date, and the industry is unable to agree on a rationing plan."). The TTA respectfully submits that rather than operating under the threat of this scenario for those years, the proposal set forth below should be adopted.

---

planning and implementation interval for area code relief." *See* FCC Order dated September 12, 1998 in Docket No. 96-98 at ¶25.

D. The TRA should request NANPA to advise the TRA and the industry of the current exhaust status and the need for a relief plan for the 901 area code.

The December 2, 1999 letter from NANPA clearly does not address the 901 area code. In fact, the TTA is unaware of any evidence of record addressing the 901 area code. The TRA, therefore, should withdraw its Request and ask NANPA to advise the TRA and the industry of the current exhaust status and the need for a relief plan for the 901 area code.

E. The TRA should enter an Order adopting an overlay relief plan for the 615 area code.

It is abundantly clear that the 615 area code will require relief in the near future. Equally clear is the fact that both the business community and the General Assembly prefer an overlay to an area code split. Tr. at 65.[4] The TRA, therefore, should Order that relief in the 615 area code will be implemented by way of an area code overlay. Issuing such an order now will benefit both the industry and the public by providing ample opportunity to prepare for the change.

Finally, the TRA should adopt an implementation timeline based on a projected exhaust of the 615 area code in the first quarter of 2003. *See* December 2, 1999 Letter at 1. The TTA is unaware of any evidence of record which suggests a later exhaust

---

[4] Additionally, it is the TTA's understanding that both 911 PSAPs and the general public overwhelmingly favor an overlay to an area code split.

date. Accordingly, the TRA should withdraw its Request and issue an order:

1. Providing that the method of relief of Tennessee's 615 area code will be an all services distributed overlay; and

2. Requesting NANPA to reconvene the industry at the appropriate time to recommend permissive and mandatory dialing dates based on the projected exhaust date of the 615 area code as set forth in NANPA's letter of December 2, 1999.

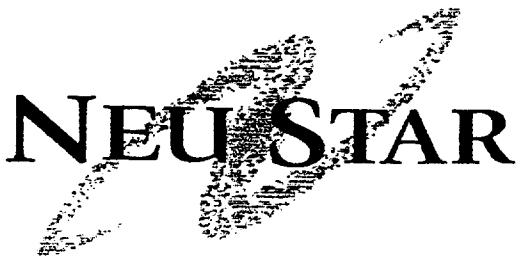
CONCLUSION

For the reasons set forth above, the TRA should reconsider its Request and enter an Order: (a) requesting NANPA to advise the TRA and the industry of the current exhaust status and the need for a relief plan for the 901 area code; and (b) adopting an overlay relief plan for the 615 area code.

Respectfully submitted,

Ellen Bryson, Executive Director
Tennessee Telephone Association
226 Capitol Boulevard, #212
Nashville, Tennessee 37014
(615) 256-8005

ATTACHMENT A



1120 Vermont Avenue, Suite 550
Washington, D.C. 20005

'99 DEC 6 AM 8 32

December 2, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

99-00784

Re: Relief of the Tennessee 615 area code

Dear Mr. Waddell:

This letter is to advise you that a reduction in the demand for central office (CO) codes and recent reclamation of codes in the 615 NPA could delay the exhaust of this NPA for several years. Consequently, NeuStar, Inc., North American Numbering Plan Administrator (NANPA) recommends that the implementation intervals proposed by the Tennessee telecommunications industry as a part of our filing to the TRA in August 1999 be proportionately extended outward to accommodate these new developments.

On August 31, 1999, NANPA submitted on behalf of the telecommunications industry in Tennessee, the industry recommendation for relief of Tennessee's 615 area code. The industry reached consensus to recommend relief Alternative #1; an all services distributed overlay, as the method of relief.

At that time, the exhaust of the 615 area code was projected to be the fourth quarter of 2000. However, a significant and unexpected reduction in demand as well as the reclamation of codes has led us to re-examine that exhaust. Over the last 12 months, the actual demand for central office codes has been about two-thirds less than the demand projected earlier this year in the April 1999 Central Office Code Utilization Survey (COCUS). Further, 41 codes will be reclaimed in the 615 NPA in January 2000. The result is the 615 area code is now projected to exhaust in the first quarter of 2003. To reflect this new and welcome information, we are proposing a new implementation time line for relief of the 615 NPA for consideration.

A potential[1] implementation timeline based on the new projected exhaust date follows:

Tennessee Regulatory Authority decision - by mid November 2001
Transitional Dialing Period Begins - 180 days after the TRA issues a final relief plan order
But no sooner than May 15, 2002
Mandatory Dialing Begins - 180 days after the commencement of the transitional dialing period

The recommended timeline will help ensure sufficient time for service providers to modify their networks and to educate telecommunications customers about the introduction of a new area code in Tennessee.

[1] The transitional and mandatory dates are predicated on the selection of an all services overlay and would not necessarily be applicable to a geographic split.

December 2, 1999

One final note. As you know the demand for CO codes could increase and change the projected exhaust date. Should that occur, we would immediately notify both the Commission and the Service Providers in the 615 NPA of any changes and the impact on the above timeline.

Sincerely,

Sandy Tokarek

Sandy Tokarek
Senior Relief Planner- Central Region
NANPA

Cc: Jim Deak - NANPA
615 Code Holders and Other Industry Members

ATTACHMENT B

Subject: Letter to TRA about 615 NPA Exhaust Date
Date: Thu, 9 Dec 1999 16:53:15 -0500 (EST)
From: NANPA.notices@upsilon.planet.net
To: nj@upsilon.planet.net

NANPA E-mail Document Distribution Announcement:

The letter sent by Sandy Tokarek, NANPA Senior NPA Relief Planner, to the Tennessee

PLEASE NOTE THAT THERE IS A TYPOGRAPHICAL ERROR IN THE DATE OF THIS LETTER. The let

For further information about this letter, you may contact Sandy Tokarek at 401-821-

General Information:

Documents related to this notification may be downloaded, in Adobe.pdf format, from

There are two areas to view documents: (both require log-in and password entry)

(1) Notification of Industry Related NANP Activities

(2) NPA Relief Planning and CO Code Administration Notification and Documentation.

Please note that access to these documents will require the use of an internet brows
(available at: http://www.adobe.com)

Individuals who have already signed up may also remove themselves completely from re

Industry participants, as defined in the Industry Guidelines (http://www.atis.org/at

SEE COURT OF APPEALS RULES 11 AND 12

TENNESSEE CONSUMER ADVOCATE,
Plaintiff/Appellant,
v.
TENNESSEE REGULATORY AUTHORITY AND UNITED CITIES GAS COMPANY,
Defendant/Appellee.

Court of Appeals of Tennessee,
Middle Section, at Nashville.

March 5, 1997.

Appeal from the Davidson County Tennessee Public Service Commission, at Nashville, Tennessee.

Charles W. Burson, Attorney General & Reporter, L. Vincent Williams, Consumer Advocate Division, Nashville, for Plaintiff/Appellant.

H. Edward Phillips, III, Tennessee Regulatory Authority, Nashville, for Defendant/Appellee.

OPINION

TODD, Presiding Judge.

***1** The petitioner, Tennessee Consumer Advocate, has petitioned this Court for review of administrative decisions of the Tennessee Public Services Commission pursuant to T.R.A.P. Rule 12. By order entered by this Court on October 3, 1996, the review is limited to an order entered by the Commission on May 3, 1996. However, the circumstances stated hereafter require reference to an order previously entered by the Tennessee Public Service Commission on May 12, 1995.

The Parties.

Prior to June 30, 1996, the Public Service Commission controlled the charges of public utilities in Tennessee. On June 30, 1996, the Public Service Commission was discontinued by enactment of the Legislature which created the Tennessee Regulatory Commission which has been substituted for the Public Service Commission in proceedings before this Court.

By T.C.A. § 65-4-118, the Consumer Advocate Division of the Office of Attorney General and Reporter may with the approval of the Attorney General and Reporter appear before any administrative body in the interests of Tennessee consumers of public utility services.

United Cities Gas Company is a public utility which purchases and distributes natural gas through its pipelines to patrons in parts of Tennessee.

The Administrative Proceedings.

On January 20, 1995, United filed with the Public Utilities Commission (hereafter P.S.C.), an application for approval of a scheme of variable rates based upon the wholesale price of gas purchased from suppliers.

P.S.C. granted leave to the Consumer Advocate to intervene.

On May 12, 1995, the P.S.C. entered an order approving the proposed scheme on condition that an independent consultant be engaged to review the "mechanism" and report to the commission annually.

On October 31, 1995, United Gas submitted to the Commission for approval, a contract with Consulting & Systems Integration, providing that the work was to be performed by a Mr. Frank Creamer. Subsequently, United Gas requested that Anderson Consulting be substituted for Consulting Systems because Mr. Creamer had severed his connection with Consulting Systems and affiliated with Anderson.

The May 3, 1996, order of the Commission, which is the subject of this appeal, approved the contract with Anderson Consulting and thereby satisfied all of the conditions for activation of the rate plan conditionally approved in the May 12, 1995 order.

On appeal, the Consumer Advocate presents ten issues for review. Only those which relate to the May 3, 1996, order will be considered.

The appellant's fourth, fifth, sixth and seventh issues are:

> IV. The commission's action violated statutory provisions, was asked upon unlawful procedure, was arbitrary and capricious, or was clear error when it took judicial notice of a report prepared by

a consultant of UCG.
V. The Consumer Advocate was denied an opportunity to be heard as to the propriety of taking judicial notice of the report.
VI. The Consumer Advocate division was not notified of the material noticed and afforded an opportunity to contest and rebut the facts or material so noticed.
***2** VII. A decision of the Tennessee Public Service Commission is void or voidable when agency members receive aid from staff assistants, and such persons received ex parte communications of a type that the administrative judge hearing officer or agency members would be prohibited from receiving, and which furnish, augment, diminish or modify the evidence in the record in violation of Tenn.Code Ann. § 4-5-304(b).

At a hearing before the Commission on February 3, 1996, the following occurred:
Mr. Irion: We have the independent consultant here. Does the Commission on wish to hear from him?
Chairman: I think what we have agreed to is just summarize his testimony.
Mr. Williams: He has not made any testimony, and--
Mr. Irion: He has only filed a report, and he is not technically our witness or--
Mr. Williams: I think he is their witness. They chose him and paid for him. We did not have any choice. The Consumer Advocate was not given any choice in the matter who was going to be the witness.
Chairman: The Commission can take judicial notice of that, that record. That's our record.
Com. Hewlett: This is our consultant.
Mr. Hal Novak: That's correct, sir. The Commission staff chose this consultant.
Chairman: We can take judicial notice of that and it can referred to in your argument here.
Mr. Williams: I would say that the Commission staff approved the consultant after the company selected the consultant.
Mr. Novak: That's not true, sir.
Chairman: Well, now wait a minute now, fellows. We can take judicial notice, and will take judicial notice of all our records and reports like that to the Commission and you can refer to that in your argument.
Mr. Williams: What I would also like to do, Commissioner, maybe we need to have a longer period of time. I would like to know what the staff's position-- it was indicated that the staff had a position that the rule operated effectively, that the Commissioners had obviously heard and were considering. I would like disclosure under the statute of the staff's position on why they think that it operates correctly.
Com. Hewlett: Well, that would be in my way of thinking not impossible to get into the record, but very difficult it is most appropriate, as I understand the law, for us to discuss withour technical staff. That's the reason that the Consumer Advocate Division was created because of the ex parte concerns of when our staff were parties to the case and when they are not. Our staff, as I understand it, it not a party to this case, and they are a resource for us for analyzing anything that is before this Commission. In this case this situation. So, I think you are trying to make a party to the case somebody that is not.
Mr. Williams: No, sir, what we are trying to do is get all the salient information on the record. The statute explicitly, the UAPA explicitly requires that the Commission disclose when it has any of the position papers that are presented by the staff, and the Public Records Act does not prevent the disclosure of those items either.
***3** Chairman: We will rule on that at the beginning of the meeting at 1:30.
Mr. Williams: Okay.
Chairman: Well, we will evaluate that with our legal counsel, and rule on it before issuing an order or in the order in this manner.

The record of proceedings clearly indicates that the Commission considered a report of an expert despite the objections of the Consumer Advocate and his efforts to impeach the report by cross-examination of the expert. T.C.A. § 65-2-109(1) and (2), authorize the consideration of a broad spectrum of evidence. However, no authority is cited to empower the Commission to deny a protesting party access to all evidence considered by the Commission and opportunity to impeach it by cross-examination of the origin of such evidence.

The issue of consideration of documents and/or communications is not an issue of "judicial notice" or "administrative notice," but an issue of admissibility of evidence and procedural fairness in respect to notice of the matter to be considered and

opportunity to cross-examine, or impeach the source or contradict the evidence to be considered.

It is elementary that administrative agencies are permitted to consider evidence which, in a court of law, would be excluded under the liberal practice of administrative agencies. Almost any matter relevant to the pending issue may be considered, provided interested parties are given adequate notice of the matter to be considered and full opportunity to interrogate, cross-examine and impeach the source of information and to contradict the information.

No error is found in the consideration of informal forms of communication. However, error is found in the failure to give timely notice of the communication with opportunity to question, cross-examine and impeach the source and contradict the information.

As illustrated by the above quotation from the record, the Commission was unfamiliar with basic rules of fairness in an administrative hearing.

> Tenn.Code Ann. § 4-5-312(b)
> Procedure of hearing. 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, as restricted by a limited grant of intervention or by the pre-hearing order. (Emphasis added.)
> Tenn.Code Ann. § 4-5-313(6)

Parties must be notified before or during the hearing, or before the issuance of any initial or final order that is based in whole or in part on facts or material noticed, of the specific facts or material noticed and the source thereof, including any staff memoranda and data, and be afforded anopportunity to contest and rebut the facts or material so noticed.

> Tenn.Code Ann. § 4-5-304(a)(b)
> Ex parte communications.
> (a) Unless required for the disposition of ex parte matters specifically authorized by statute, an administrative judge, hearing officer or agency member serving in a contested case proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any person without notice and opportunity for all parties to participate in the communication.

***4** (b) Notwithstanding subsection (a), an administrative judge, hearing officer or agency member may communicate with agency members regarding a matter pending before the agency or may receive aid from staff assistants, members of the staff of the attorney general and reporter, or a licensed attorney, if such persons do not receive ex parte communications of a type that the administrative judge, hearing officer or agency members would be prohibited from receiving, and do not furnish, augment, diminish or modify the evidence in the record. (Emphasis added.)

This Court concludes that the Commission commited a violation of basic principles of fairness in failing to afford the Consumer Advocate reasonable access to the materials to be considered and reasonable opportunity to cross- examinate or otherwise impeach the origin of such materials..

For the foregoing reasons, the order entered by the Public Service Commission on May 3, 1996, is reversed, vacated, and the cause is remanded to the Tennessee Regulatory Authority for such further proceedings and actions as it may deem appropriate including a reconsideration of the subject of the May 3, 1996, order of the Public Service Commission.

Should the Regulatory Authority reach a conclusion different from that expressed in the May 3, 1996, order of the Commission, the way may be opened for a further consideration of the subject matter of the May 26, 1995, order, in which event the authority will be free to examine the merits of the order and the proposal dealt with therein.

Of particular interest and concern are the propriety of omitting certain income from considering "fair return," of "rewarding" utility for keeping its expenses at the minimum, and of utilizing the services of an expert employed by the utility. These issues have not been discussed in this opinion because of the limitation of the scope of the appeal granted by this Court.

Costs of this appeal are assessed against the Tennessee Regulatory Authority.

REVERSED AND REMANDED.

CANTRELL and KOCH, JJ., concur.