

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
SECOND FLOOR CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-133

Permissibility of Intrastate Long-Distance Directory Assistance Charges by Long Distance Telephone Service Resellers

QUESTION

May a long-distance telephone service reseller charge a fee of eighty-five cents (\$0.85) each time that it provides intrastate long distance directory assistance to Tennessee customers?

OPINION

Yes. A long-distance telephone service reseller may charge a fee for intrastate long-distance directory assistance within the State of Tennessee (without offering to switch the customer to another carrier as specified in Tenn. Code Ann. § 65-5-206), so long as the fee charged is equal to or less than the fee charged for the same service by a telecommunications provider that is a dominant service provider in the intrastate telecommunications market and whose rates either: (1) have been fixed by the T.R.A. based on the carrier's cost of providing service, or (2) were previously fixed by the T.R.A. based on the carrier's cost of providing service, but are now "price regulated" under either Tenn. Code Ann. § 65-5-209 or T.R.A. Rule 1220-4-2-.55 *et seq.*

ANALYSIS

The principal statute that governs the instant question is Tenn. Code Ann. § 65-5-206, which does not set any express limitations on charges for operator-assisted telephone services. This statute states, however, that if a telephone carrier charges more for an intrastate operator-assisted service than the maximum rate approved by the Tennessee Regulatory authority, then it must:

1. Identify by name the carrier providing the service;
2. State all costs for providing the service; and
3. Offer to switch the customer to any other carrier offering operator-assisted services and inform the customer that the switch will be made without charge.

Tenn. Code Ann. § 65-5-206(a). The “maximum rate approved by the Tennessee Regulatory Authority” is defined as “the highest legal rate charged for handling an identical call by a carrier whose rates have been fixed by the authority based on the carrier’s cost of providing service.”

At the time that Tenn. Code Ann. § 65-5-206 was enacted, the telecommunications industry was just beginning to move away from a monopolistic model towards one based more on regulated competition and free enterprise; the rates of the three primary carriers in this State, AT&T, Bell South, and United Telephone Southeast, were fixed by the Public Service Commission “based on the carrier’s cost of providing service.” *See* Order, *In Re: AT&T Communications Show Cause for Failure to File Financial Reports*, Docket No. 92-15195 (before the Tennessee Public Service Commission 1993); Order, *In Re: Earnings Investigation of AT&T Communications of the South Central States*, Docket No. 90-07460 (before the Tennessee Public Service Commission, 1990). In the current telecommunications market, however, these three carriers are now subject to “price regulation” rather than the old “cost regulation.” *See* Tenn. Code Ann. § 65-5-209; T.R.A. Rule 1220-4-2-.55 *et seq.* Under “price regulation” these carriers are allowed to take their rates set under “cost regulation” and, using those rates as a base, periodically raise them according to an inflation-based formula.¹

Although the replacement of “cost regulation” by “price regulation” for the major telecommunications providers in Tennessee has made it more difficult to apply Tenn. Code Ann. §65-5-206, it is the opinion of this Office that the statute is still viable. The clear intent of Tenn. Code Ann. § 65-5-206 is to set a ceiling on service fees charged by telecommunications providers based on the charges made for the same services by the original dominant carriers in this State: BellSouth, United Telephone Southeast, and AT&T, all of which were subject to “cost regulation” at the time that the statute was enacted. As rates set under “price regulation” for these carriers are still, albeit indirectly, based on their “cost of providing service,” this Office interprets Tenn. Code Ann. § 65-5-206 to allow a service charge, provided that it is equal or less than the amount already charged by a “price regulated” telecommunications carrier for the same service, so long as the “price regulated” telecommunications provider, during the time prior to its conversion to a “price regulation” model, was regulated by the T.R.A. based on its cost of providing service.²

¹ Rates set by BellSouth and United Telephone Southeast are adjusted based upon inflation in accordance with Tenn. Code Ann. § 65-5-209. Under Rule 1220-4-2-.55 *et seq.*, fees for AT&T’s “Direct Distance Dialing” service, which includes operator assisted calls that are accessed by dialing 0 or 0+ numbers, are adjusted indirectly in accordance with inflation, since these charges are adjusted for changes in the access charges that AT&T pays local exchange carriers such as BellSouth and United Telephone Southeast, whose charges are, as stated, directly adjusted based upon inflation.

² Because Tenn. Code Ann. § 65-5-209 does not specifically prohibit any charges for operator-assisted services, to interpret the statute any other way would render it an absurdity. Currently, there are no cost-regulated telephone communications providers in this State that render intrastate long distance directory assistance. If the statute does not refer to AT&T, BellSouth, and United Telephone Southeast, then a carrier may charge any amount that it wishes by identifying itself, stating its costs, and offering to switch a customer without cost, but noting that *no* telecommunications providers charge less than the “maximum rate approved by the Tennessee Regulatory Authority,” as defined by statute.

Tenn. Code Ann. § 65-5-206 is further implemented by Tennessee Regulatory Authority Rule 1220-4-2-.57(7)(a):

Any operator service provider whose rates are equal to or less than the maximum rates of the predominant LEC or IXC [Local Exchange Carrier or Interexchange Carrier] for an equivalent call, as defined in T.C.A. Section 65-5-206(1) and (2) shall be deemed just and reasonable. Any operator service provider that desires to charge a higher rate or utilize a different pricing method than the predominant LEC or IXC shall file appropriate cost justification for the proposed charge.

Rule 1220-4-2-.57(7)(a) appears to be a reasonable means of applying the principles underlying Tenn. Code Ann. § 65-5-206 to the current regulatory environment. It requires an operator service provider either: (1) to file cost justification for a proposed charge, or (2) to charge an equal or lesser amount than the fee levied by a telecommunications provider that complies with Tenn. Code Ann. § 65-5-206 and is also a “predominant carrier.” This Office notes that there is at least one telecommunications provider, AT&T, that complies with Tenn. Code Ann. § 65-5-206 and that is also a predominant intrastate carrier.

Until recently, AT&T has been generally considered to be *the* “dominant exchange carrier” in the telecommunications industry. See *MCI Telecommunications Corp. v. American Telephone and Telegraph Co.*, 512 U. S. 218, 221, 114 S.C. 2223, 2226-27 (1994). Although AT&T has recently been declared by the FCC no longer to be a dominant exchange carrier in the interstate telecommunications market, there has been no similar ruling by the T.R.A. regarding the *intrastate* Tennessee market; consequently, AT&T should still be considered to be a “dominant carrier” for that purpose, at least insofar as Rule 1220-4-2-.57(7)(a) is concerned. See Order, *In the Matter of Motion of AT&T Corp. to Be Reclassified as a Non-Dominant Carrier*, FCC 95-427 (1995).

Furthermore, AT&T was formerly subject to “cost regulation,” and is now subject to “price regulation.” See Order, *In Re: AT&T Communications Show Cause for Failure to File Financial Reports*, Docket No. 92-15195 (before the Tennessee Public Service Commission 1993); Order, *In Re: Earnings Investigation of AT&T Communications of the South Central States*, Docket No. 90-07460 (before the Tennessee Public Service Commission, 1990); T.R.A. Rule 1220-4-2-.55 *et seq.* As AT&T is both a predominant intrastate carrier and a price-regulated, formerly cost-regulated carrier, it may be used as a “yardstick” to determine whether a given fee for an operator-assisted service is valid. If a telecommunications reseller’s charge for an intrastate, operator-assisted service is equal to or less than the amount charged by AT&T for the same service, then the reseller has complied with both Tenn. Code Ann.

It is the opinion of this Office that the legislature clearly intended that directory charges be allowed, but that there should also be *some* protection for consumers from charges in excess of industry norms. Our reading of the statute would effectuate both of these purposes.

§65-5-206 and Rule 1220-4-2-.57(7)(a).

AT&T has filed a General Services Tariff with the State of Tennessee for “directory assistance service.” As part of this tariff, AT&T has registered a charge of \$1.40 for directory assistance within this State.³ See “AT&T Communications of the South Central States, Inc. General Services Tariff, Tennessee,” Tariff A, Section A5, Fourth Revised Page 10). As the reseller in question charges only eighty five cents (\$0.85) for intrastate directory assistance, the charge is deemed reasonable under Rule 1220-4-2-.57(7)(a) and Tenn. Code Ann. § 65-5-206 and is, therefore, permissible, so long as AT&T’s charge for the same service is properly set at or above eighty-five cents.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

SEAN D. CLANCY
Assistant Attorney General

Requested by:

The Honorable Marsha Blackburn
State Senator
War Memorial Building, Suite 305
Nashville, TN 37243-0223

³ It is the understanding of this Office that the current charge of \$1.40 by AT&T for directory assistance is still under administrative consideration and may yet be subject to a challenge as to its propriety. As the previous, unchallenged charge for directory assistance by AT&T was \$0.95, however, the \$0.85 fee charged by the reseller in question is still permissible under Tenn. Code Ann. § 65-5-206 and Tennessee Regulatory Authority Rule 1220-4-2-.57(7)(a) regardless of whether the \$1.40 fee ultimately is determined to be valid or not.