Sprint.

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November 15, 2000

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

RE: Docket No. 00-00702 (Rulemaking Proceeding – Regulations for the Provisioning of Tariff Term Plans and Special Contracts)
Sprint's Comments

Dear Mr. Waddell:

Pursuant to the October 24, 2000 Notice issued in this case, enclosed for filing are the original and thirteen copies of the Comments of United Telephone-Southeast, Inc. and Sprint Communications Company L.P.

Please contact me if you have any questions regarding this filing.

Sincerely yours,

James B Wright

James B. Wright

Enclosure
CC: Guy Hicks (with enclosure)
Jim Lamoureux (with enclosure)
Jon Hastings (with enclosure)
Charles Welch (with enclosure)
Henry Walker (with enclosure)
Consumer Advocate (with enclosure)
Dennis Wagner (with enclosure)
Laura Sykora (with enclosure)
Kaye Odum (with enclosure)

PAID

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

DOCKET NO. 00-00702

IN RE: Proposed Rulemaking to Establish Regulations for the Provisioning of Tariff Term Plans and Special Contracts

SUPPLEMENTAL COMMENTS OF SPRINT

United Telephone-Southeast, Inc. (UTSE) and Sprint Communications Company L.P. (collectively, "Sprint") respectfully submit its second set of comments to the Tennessee Regulatory Authority (TRA) regarding the Proposed Rulemaking to Establish Regulations for the Provisioning of Tariff Term Plans and Special Contracts in Docket No. 00-00702.

Sprint appreciates the opportunity to further comment in this important proposed rulemaking proceeding. While Sprint does not intend to simply repeat the position previously submitted both orally and in writing, several key points are worth re-iterating.

Sprint believes that its existing TRA approved termination liability provisions are neither punitive or anti-competitive even though the provisions may vary from those in the proposed rule. Within the industry, it is both a common and reasonable practice to anticipate some customer commitment with regard to length of network connectivity in exchange for the provisioning of certain network services at some level of discount over standard month-to-month rates. Both parties benefit from the transaction. The network provider secures the knowledge that its network investment will be optimally utilized

over a reasonable time period due to the continuity of provisioning service to the customer. For this commitment, the customer receives a lower price for the service.

If rules are instituted that do not allow for sufficient termination liabilities, one possible outcome is excessive churn of those customers from network provider to network provider. Excessive churn between competing network providers benefits neither the customer nor the competing providers in the long run. Customer acquisition costs among all network providers are likely to increase markedly over time. From a network service provider standpoint, networks are underutilized with non-optimal use of limited capital resources. At the same time, customer-generated revenue is less than anticipated. From a customer perspective, the growth of acquisition costs within a market will likely result in higher service fees to reflect the sustainable margins in providing the services.

For these reasons, Sprint believes that its existing business practices coupled with TRA oversight of tariff language changes that are required for existing termination liability provisions for incumbent local exchange carriers (ILECs) are adequate measures for protecting both the customer and the network provider and no rules should be adopted. However, if rules are adopted, they should be limited to ILECs, and then, only for certain services and for a finite period.

With the exception of BellSouth, every other party commenting during the hearing, including Sprint, recommends that the TRA exempt Competitive Local Exchange Carriers (CLECs) and Interexchange Carriers (IXCs) from the proposed rules and regulations governing tariff term plans and special contracts. As the CLECs indicated at the hearing, they are generally new market entrants that do not

substantially control the terms and conditions of service within the market and should not be subject to the same level of regulation that may be deemed appropriate for an ILEC. Neither should IXC services be subject to such rules. The market for IXC services is mature, with intensely competitive practices for both the respective IXC and its customer base. Such an evolved competitive market is capable of ensuring that customers get the desired level of contractual control.

Flexibility in regulatory approaches has been specifically authorized by the Legislature. For example, T.C.A. § 65-4-123 declares it the policy of the state to regulate telecommunications services and telecommunications services providers in a manner that protects the interests of consumers without "*unreasonable* prejudice or disadvantage to any telecommunications services provider. . . ." (emphasis added) Thus, even assuming one believes that flexibility in regulatory approach regarding term plans amounts to a disadvantage or a prejudice, it is only prohibited if it amounts to an *unreasonable* one.[1] As previously shown, there are fundamental differences between ILECs and CLECs and IXCs that warrant differences in regulatory oversight.

T.C.A. § 65-5-208(b) and (c) also allow the TRA to adopt rules that may vary by provider, as appropriate:

> (b) The authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth herein are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the authority may exempt telecommunications providers from such requirements as appropriate. The authority shall in any event exempt a telecommunications service for which existing and potential competition is an effective regulator of the price of those services.

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[1] The same standard applies in T.C.A. 65-4-122(c) wherein only *undue* or *unreasonable* preferences are prohibited, not every difference.

> (c) . . . The authority shall, as appropriate, also adopt other rules or issue orders to prohibit cross-subsidization, preferences to competitive services or affiliated entities, predatory pricing, price squeezing, price discrimination, tying arrangements or other anti-competitive practices.

Furthermore, the TRA recently found that Tennessee law "explicitly contemplates more restrictive treatment for a incumbent's services than for CLEC services" when addressing a special promotion of BellSouth.[2]

Moreover, even if the proposed rule is limited to ILECs, there are certain contracts and services that should be exempted from the rule. ILEC customers involved in tariff term plans and special contracts are typically sophisticated business customers that are very aware of their options. In fact, in many cases, the contract is the result of a competitive proposal or competitive bidding situation. In those cases it is very clear that the customer is fully informed of the contents of the offer as well as the various options available to it should it find a particular bid provision too onerous.

In addition, certain services are by their nature more likely to be purchased by telecommunications-sophisticated customers. For example, carrier access services are typically purchased by extremely knowledgeable, well-informed carriers who not only know their alternatives, but who desire longer-term plans with deeper discounts. Access service pricing policies are now carefully scrutinized by regulators; and therefore, there is no need for additional scrutiny via these rules for special contracts.

Whether the result of a competitive bid or purchased out of the tariff, Sprint fully supports clear and complete disclosure of all terms and conditions with customers

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[2] TRA Docket No. 99-00936, Order dated November 7, 2000, at page 5.

establishing term service. These are business-to-business arm's length transactions in which termination liability provisions should be, and in Sprint's case *are*, clearly spelled-out in both the tariffs (applicable to TDPs) and in the contracts (applicable to TDPs and CSAs). Indeed, for Sprint, the termination liability provisions are conspicuously located within the contract, appearing in the same provision describing the term of the contract. In short, Sprint's business and carrier customers are well aware of the liability for terminating service prior to the end of the full term. Consequently, in addition to exempting CLEC and IXC services, Sprint urges the TRA to exempt all telecommunications service providers (ILEC, CLEC, IXC) from any rule, contracts and services that are purchased as a result of a competitive process as well as access services.

If the TRA nevertheless believes it is appropriate to continue with a rule, Sprint urges the Commission to seriously consider the Time Warner "no rules plus" proposal, with certain modifications. As Sprint understands the proposal, it is essentially an asymmetrical regulation proposal that establishes a three-year window for a CSA rule for ILECs. The market would regulate CLEC contract activity and consumers could still file complaints with the TRA if necessary. For the ILECs, only termination liability rule language would apply, as well as a three-year term or contract limit. Under the proposal, ILECs would not file every agreement so the TRA would not be required to approve every CSA. The TRA would maintain its statutory oversight role. According to Time Warner, after three years, this streamlined rule provision would end and the "gloves would come off entirely" and ILECs and CLECs would be treated equally.

Sprint agrees with several aspects of the "no rules plus" proposal. For example, Sprint previously commented that the extremely proprietary nature of customer-specific information resulting from the execution of competitive contractual proposals should be protected in any competitive environment, thus Sprint supports the removal from the rule of the detailed filing requirements. Moreover, Sprint agrees with the fundamental approach of the proposal that different regulatory treatment for ILECs and non-dominant CLECs is justified for circumstances such as this. Furthermore, Sprint supports the suggestion that if rules must be mandated for ILECs, then a sunset window of no more than three years is appropriate. The passage of three years is likely to significantly change the dominant carrier status of ILECs in Tennessee with the market likely becoming substantially more competitive at the conclusion of that timeframe.

Despite general agreement with several aspects of the "no rules plus" approach, Sprint strongly opposes any notion that contracts executed prior to the institution of such proposed new rule language be unilaterally and retroactively modified to limit terms to no more than three years. Instead, Sprint would limit any new term length restrictions to contracts executed during the life of the proposed rule only.

In conclusion, Sprint believes no rules of general applicability are required. However, if rules are determined to be appropriate, at a minimum, the rule should exclude IXCs and CLECS, have a three-year sunset provision for ILECs and further exempt ILEC contracts garnered through competitive situations, exempt certain specific services such as access services, and be further modified as specifically discussed herein.