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November 15, 2000

VIA HAND DELIVERY

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

Re: *Proposed Rules for the Provisioning of Tariff Term Plans and Special Contracts*
Docket No. 00-00702

Dear Mr. Waddell:

Enclosed please find the original and thirteen copies of the Comments of BellSouth Telecommunications, Inc. Copies of the enclosed have been provided to parties of record.

Sincerely yours,

Guy M. Hicks

GMH/jem

Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: ***Proposed Rules for the Provisioning of Tariff Term Plans and Special Contracts.***

Docket No. 00-00702

COMMENTS OF BELLSOUTH TELECOMMUNICATIONS, INC.

In their current form, the Proposed Rules for the Provisioning of Tariff Term Plans and Special Contracts ("Proposed Rules") basically do two things: (1) they limit the termination charges that can be imposed upon early termination of a tariff term plan or a special contract; and (2) they establish certain information which must be filed with the Tennessee Regulatory Authority ("TRA") along with any proposed tariff term plan or special contract. These matters are entirely within the ambit of state law, and the TRA must adopt and apply these rules in a manner that is consistent with its powers and duties under state law. With regard to the matters addressed by the Proposed Rules, state law provides the TRA the same powers and imposes upon it the same duties with regard to incumbents as it does with regard to any other telecommunications service provider. Whatever the provisions of the final version of the rules turn out to be, therefore, they must apply to incumbents and CLECs alike.

I. THE COMMENTS PRESENTED BY THE CLECs SUPPORT THE CONCLUSION THAT ANY RULES THAT ARE PROMULGATED SHOULD APPLY TO CLECs AND INCUMBENTS ALIKE.

Several CLECs presented comments during the October 18, 2000 public hearing in this docket. These comments, coupled with other information in the public record, show that: (1) telecommunications customers in the Tennessee business market are "inundated" with competition; (2) any concerns regarding termination charges and term contracts apply to "CLEC-to-CLEC" competition with the same force as they apply to "CLEC-to-incumbent" competition; and (3) the

CLECs' claims that the rules impose an undue "administrative burden" upon them are inconsistent with other comments the CLECs presented during the public hearing.

A. Despite the cries of "wolf" the CLECs have repeated for years, CSAs do not impair the thriving competition that exists in the business market in Tennessee -- to the contrary, the CLECs' comments acknowledge that business customers in Tennessee are "inundated" by competition.

The CLECs apparently do not oppose the Proposed Rules -- they simply oppose having the Proposed Rules apply to them. In their unabashed effort to avoid TRA scrutiny of their own actions, the CLECs complain that "[s]everal years ago, when we first began to look at CSAs, the focus was on the use of CSAs by BellSouth to forestall and hinder competition for local telecommunications."[1] What the CLECs fail to acknowledge, however, is that the TRA has already given the CLECs the opportunity to prove these claims, and the CLECs failed to do so. In Docket No. 98-00599, AT&T, the Consumer Advocate Division, NEXTLINK, and Time-Warner conducted months of discovery, examined thousands of pages of BellSouth documents, presented live testimony of five witnesses, cross-examined BellSouth's witness, filed numerous briefs, and presented hours of oral argument to the TRA.[2] After carefully examining everything presented to it in that docket, the TRA unanimously concluded that the evidence simply did not support the CLECs' cries of wolf. As explained below, both information in the public record and the comments the CLECs themselves presented during the October 18, 2000 hearing in this docket show that the TRA was absolutely right.[3]

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1 *See* Comments of AT&T (Tr. at 13). *See also* Comments of MCI WorldCom (Tr. at 16-17).

2 In addition to these entities, New South, MCI Access Transmission Services, and SECCA also intervened in Docket No. 98-00599.

3 Like the comments AT&T presented during the October 18, 2000 public hearing, the written comments AT&T filed on October 16, 2000 simply restate arguments it unsuccessfully presented in Docket No. 98-00599. Just as it rejected these arguments in that Docket, the TRA should reject these same arguments in this docket.

1. Despite the use of term contracts with termination charges by nearly the entire industry, the CLECs have increased their market share for business customers (which are the customers for whom they have chosen to compete most aggressively) from approximately 7% in 1997-1998 to approximately 25% as of June 2000.

The CLECs claim that they are "still struggling to compete,"[4] but they present outdated data in support of that position. The CLECs, for example, commented that the 1997-1998 report the TRA presented to the legislature stated that CLECs had "about 7 percent" of the business access lines in Tennessee.[5] While acknowledging that "there's more recent data," the CLECs were "sure that the total is still very, very small."[6]

As explained more thoroughly in Section III below, however, the CLECs' share of the business market is not "very, very small." In fact, it is a matter of public record that as of June 2000, CLECs had nearly 25% of the business access lines in the state of Tennessee. *See* Concurring and Dissenting Opinion in Docket No. 00-00170 at 2. BellSouth believes the CLECs have an even higher share of that market today. This data, standing alone, proves that the TRA was absolutely correct when it rejected the CLECs' assertions that the use of CSAs harms the development of competition in Tennessee.

2. The comments presented during the public hearing show that CLECs are enjoying tremendous success and that business customers in Tennessee are "inundated" by competition.

The data discussed above proves that the cries of wolf the CLECs futilely raised in Docket No. 98-00599 ring even more hollow now than they did then. In addition to this data, the comments presented by the CLECs during the public hearing show that their claims of competitive harm are simply untrue. Time-Warner, for instance, proudly stated that it "has enjoyed a tremendous amount of

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4 *See* Comments of AT&T (Tr. at 13).

5 *See* Comments of Time-Warner (Tr. at 31).

6 *Id.*

success in the last six years"[7] and that "revenue increased 126 percent for the quarter ending on June 30th of 2000, as compared to the same period for 1999."[8] Perhaps most telling, however, is the following comment presented by one of the newest entrants in the Tennessee market:

> [M]ost of the business people today are much more savvy than they were years ago. Just as [MCI WorldCom] stated earlier, the competition is out there, and they are inundated with it.[9]

BellSouth wholeheartedly agrees -- the competition is out there inundating business customers in Tennessee with countless competitive alternatives every day.

B. Any concerns regarding termination charges and term contracts apply to "CLEC-to-CLEC" competition with the same force as they apply to "CLEC-to-incumbent" competition.

As explained more thoroughly in Section III below, to the extent that there may be valid concerns regarding the use of termination charges and term contracts, those concerns apply regardless of the person or entity that applies such a termination charge. As noted below, the comments presented by the CLECs bear this out.

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[7] Comments of Time-Warner (Tr. 30).

[8] *Id.* Time-Warner also commented that it is "EBITDA positive, and we've been so since the second quarter of last year." (Tr. at 30).

[9] Comments of New South (Tr. at 43) (emphasis added). Earlier, MCI WorldCom had expressed its surprise that the TRA is considering a rule aimed at protecting business customers in Tennessee, explaining that "for the most part, business customers -- it's only business customers that are signing these contracts, and a business customer that is entering into a contract with a CLEC, they are aware that they have competitive options. And it's not typically the TRA's role, although it's legally permitted to do so, to protect business customers. Regulatory bodies at the state level and federal level rarely go far out of their way to, you know, protect business customers. They have lawyers to protect them. They have internal experts on telecommunications often times, if it's a large enough customer. I just never have seen the TRA or any state regulatory body really step out and, you know, come up with a rulemaking to protect business customers." Comments of MCI WorldCom (Tr. at 23-24).

1. CLECs use term contracts and termination charges.

The CLECs generally acknowledge that they use term contracts and termination charges. AT&T and Time-Warner, for example, acknowledge the use of term contracts, and they have filed summaries of some of their special contracts with the TRA. Time-Warner also has tariffed service arrangements which include term commitments and full-buyout termination charges.[10] Additionally, Sprint,[11] MCI-WorldCom,[12] and AT&T[13] each acknowledge the use of termination liability charges.

2. Both common sense and evidence in the public record disprove the CLECs' far-fetched position that the concerns they raise, if they are valid, somehow do not apply to "CLEC-to-CLEC competition."

The CLECs appear to have taken the far-fetched position that full buyout termination charges in BellSouth's term contracts would impede their ability to compete for BellSouth's customers, but that the exact same provisions in another CLEC's term contracts would not impede their ability to compete for that CLEC's customers. New South, for instance, commented that the termination charges in

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[10] Section 2.18 of Time-Warner's Tennessee Tariff No. 2 provides that if a customer terminates a term contract "after the first 12 months, termination liability will be equal to 50% of the monthly recurring charges for the remaining term of the agreement" -- a 50% buyout. The same tariff section, however, provides that "[i]n the event that the Customer terminates a Term Agreement prior to the end of the term, the customer's liability if termination occurs during the first 12 months of the service period is 100% of the monthly recurring charges for the remaining term of the agreement" -- a full buyout. *See also* Transcript of Hearing in Docket Nos. 98-00559, 99-00210, and 99-00244, Vol. II.A at 62 (Time Warner's witness acknowledged that Time Warner has "full buyout" termination charges in its tariffs).

[11] Comments of Sprint (Tr. at 6).

[12] Comments of MCI-WorldCom (Tr. at 18) (discussing its "dislike" of the rules because they would "limit our own termination penalties" and require it "to prove up at the time of filing any anticipated cost above the permitted penalty in order to be able to recover it at the end should our customers break the contract").

[13] Comments of AT&T (Tr. at 25) ("If you're also saying we also have to comply with the termination liability provisions and the term limits, that does -- and I can't quantify how much, but that does impose additional administrative burdens on the CLECs.").

BellSouth's contracts were an "impediment to our ability to get out there and compete."[14] According to New South, such contracts are a "wall" and "whether our salespeople are walking in the streets of Nashville, Memphis, or Knoxville, when they're having to walk away from potential contracts" because of termination charges in BellSouth's contracts.[15]

In light of this testimony, New South was asked to comment on whether the presence of the same full-buyout termination charges in a long-term contract of another CLEC would hinder New South's ability to compete with that CLEC. New South's response was quite enlightening:

> Now, I can't speak specifically for everyone in the room, but for some in the room, including ourselves, we don't have these enormous penalty provisions. . . .[I]f the customer is not afraid of getting out of a contract because the penalties aren't so great, then, in fact, it does still serve the customer and the best interest of competition for them to be able to get out of a contract with New South to go with Time-Warner or to go with ITC DeltaCom.[16]

New South, therefore, acknowledges that it "does still serve the customer and the best interest of competition" for a customer to get out of a contract with one CLEC and purchase services from another CLEC as easily as the CLECs argue that a customer should be able to get out of a contract with an incumbent and purchase services from a CLEC. Yet when faced with a Proposed Rule that allows for that very thing, New South vehemently opposes the application of the Proposed Rule to its own contracts.

The CLECs, however, cannot legitimately argue that any concerns that apply to the use of term contracts and termination charges by incumbents somehow do not apply with equal force to the use of term contracts and termination charges by the CLECs. As NEXTLINK's witness testified in Docket No. 98-00599, NEXTLINK (or, today, XO Communications) would experience the same practical,

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14 Comments of New South (Tr. at 41).

15 *Id.*

16 Comments of New South (Tr. at 46-47) (emphasis added).

real-world difficulties winning the business of a customer who ordered services under Time Warner's tariffed five-year "full-buyout" contract as it would winning the business of a customer who has signed a tariffed term contract with BellSouth. Tr. Vol. II.B at 94; Tr. Vol. II.C at 140-141. Moreover, the Consumer Advocate Division's witness in the same docket unequivocally testified that he has the same concerns with the tariffed termination liability provisions in the tariffs of the CLECs who intervened in that docket as he has with the tariffed termination liability provisions in BellSouth's tariffs. Tr. Vol. II.D at 332-333. Clearly, "full-buyout" termination charges have the same impact on "CLEC-to-CLEC" competition as they have on "CLEC-to-incumbent" competition.

Additionally, as Director Greer noted during the October 18, 2000 hearing, the use of "full buyout" termination charges by CLECs presents issues that are not presented when an incumbent uses such charges. Many CLECs, for example, bundle local service with interLATA toll services. While both AT&T and MCI-WorldCom downplayed their use of such bundled offerings, it is clear that other CLECs are using bundled offerings with a vengeance. NEXTLINK (now known as XO Communications), for instance, recently offered a service known as "The Worx," which bundled local and toll services under one-year, two-year and three-year term contracts. *See* Attachment 1. Similarly, TriVergent has offered bundled local and interLATA services, *see* Attachment 2, and NewSolutions has offered bundled local and long distance service under a two-year term contract. *See* Attachment 3.

The CLECs have gone to great lengths to avoid having the Proposed Rules apply to them. Despite these efforts, however, the fact remains that the concerns regarding termination charges and term contracts are as valid or as invalid with regard to CLEC-to-CLEC competition as they are with

1. **If it is true that competitive forces make it impossible for CLECs to execute long-term contracts with full-buyout termination charges, how is compliance with the Proposed Rules' limits on termination charges so incredibly burdensome for the CLECs?**

During the public hearing, the CLECs generally took the position that competitive forces prevent them from signing customers to long-term contracts with full-buyout termination charges.[20] Director Greer, for example, asked MCI-WorldCom's representative to comment on the effect that a CLEC's termination charges in long-term contracts would have on "CLEC-to-CLEC competition."[21] In response to that question, MCI-WorldCom's representative did not address the effects that such charges would have on CLEC-to-CLEC competition. Instead, MCI-WorldCom's representative stated "I don't know that a salesperson could, with a straight face, put a contract like that before a customer, because a customer would not feel himself obliged to sign on to such onerous terms."[22] Similarly, New South commented that "the majority of our contracts are two-year contracts . . . ."[23]

These comments leave the impression that the special contracts and tariffs of the CLECs may already comply with the Proposed Rules' limits on termination charges and term length. If this is true,

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[20] This competition, however, has not led Time-Warner to change the full-buyout termination liability charge that was in its tariff during the hearing in Docket No. 98-00599 in a manner that is consistent with the terms of either the Proposed Settlement Agreement or the Proposed Rules. As of the date of the hearing in Docket No. 98-00599, Section 2.13.2 of Time-Warner's Tariff Tennessee Tariff No. 2 provided for a full-buyout termination charge. As of October 18, 2000, Section 2.18 of Time-Warner's Tennessee Tariff No. 2 provided that if a customer terminates a term contract "after the first 12 months, termination liability will be equal to 50% of the monthly recurring charges for the remaining term of the agreement" -- a 50% buyout. The same tariff section, however, provides that "[i]n the event that the Customer terminates a Term Agreement prior to the end of the term, the customer's liability if termination occurs during the first 12 months of the service period is 100% of the monthly recurring charges for the remaining term of the agreement" -- a full buyout.

[21] Tr. at 27.

[22] Comments of MCI-WorldCom (Tr. at 27).

[23] Comments of New South (Tr. at 42).

it should be no burden at all for the CLECs to comply with those limits. This is, after all, the exact position the CLECs took in support of their "no rules plus" proposal.

Under the CLECs' "no rules plus" proposal, "CLECs would have no rules regarding CSAs at all,"[24] and there would be no filing requirements for incumbents.[25] Instead, "for the ILECs, the only rules to apply to them are the termination liability language in the proposed rule and a three-year contract or term limit."[26] In arguing that BellSouth should have no opposition to this proposal, the CLECs first emphasized that the proposal relieves BellSouth of its obligation to file CSAs (just as it relieves the CLECs of their obligation to file summaries of their CSAs). The CLECs then addressed the limitation on termination charges by stating

> if [BellSouth is] already doing the termination liability language [and] the three-year contract limit, then that doesn't seem very onerous for you.[27]

Why is the reverse not also true? If the competition that is inundating Tennessee's business customers already prohibits a CLEC from using long-term contracts with full-buyout provisions, why is a rule setting forth the same prohibitions so very onerous for them?

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[24] Comments of Time-Warner (Tr. at 34). *See also* Comments of Time-Warner (Tr. at 64)("The proposed no-rules-plus approach would be that the CLECs, we don't have any filing requirements, there's no rules that apply to us.").

[25] Comments of Time-Warner (Tr. at 35)("They [incumbents] would not have any filing requirements.").

[26] Comments of Time-Warner (Tr. at 34-35). *See also* Comments of Time-Warner (Tr. at 64)("For the ILECs, the only rule that applies is having the termination liability language that's in the proposed rule and a three-year limit on contracts or term plans.").

[27] Comments of Time-Warner (Tr. at 65).

2. How is the requirement of filing copies of special contracts with the TRA so incredibly burdensome for the CLECs, when the existing rules already require CLECs to take the time and effort to prepare summaries of each of their special contracts and file those summaries with the TRA?

Under the TRA's Local Competition Rules, CLECs must prepare summaries of each and every one of their special contracts and file those summaries with the TRA.[28] Interexchange carriers are required to file summaries of their special contracts as well.[29] Filing copies of the actual contracts with the TRA (with the customer names redacted) is much less burdensome than the current requirement of preparing summaries of the contracts and filing those summaries with the TRA. It is less burdensome, that is, to the extent that a CLEC is actually complying with the current rule.

The comments presented during the public hearing, however, cast serious doubt on the CLECs' compliance with the current filing requirements. Some of the CLECs, for instance, could not definitively state that they are in compliance with those filing requirements. MCI-WorldCom stated "now that we're aware of the requirement, we're intending to comply with it,"[30] which certainly suggests that there has been a time during which MCI-WorldCom was not complying with the rule. Similarly, AT&T acknowledged that it had not been complying with this rule until it acquired TCG and stated, "[w]e're maybe a little behind in compliance . . . ."[31] Is it any surprise that entities which are only now coming into compliance with a rule that has been in effect for years are objecting to having additional rules apply to them?[32]

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28 *See* Rule 1220-4-8-.07(3)(b).

29 *See* Rule 1220-4-2-.55(2)(g).

30 Comments of MCI-WorldCom (Tr. at 19) (emphasis added). MCI-WorldCom offered no explanation for the fact that it apparently has only recently made itself aware of the requirements set forth in rules that have been in effect for years.

31 Comments of AT&T (Tr. at 22) (emphasis added).

32 MCI-WorldCom and AT&T are not the only CLECs which apparently have had problems complying with filing requirements. The record in Docket No. 00-00391, for instance, shows that

In reality, it is not simply the filing requirement to which the CLECs object. Instead, at least some of the CLECs appear to be objecting to any regulations being imposed upon them at all:

> [F]rankly, the impact of regulation on our ability to contract with customers is substantial enough that we would prefer no rules that restrict our ability to contract with our customers;[33]
>
> It seemed extremely onerous to our business people, that is, the contract people and the salespeople and marketing people, and they were so displeased with the rules that they suggested it would be preferable for no regulation to be in place for any carrier, including BellSouth, than for us to have to face this new regulation as a CLEC;[34]
>
> But we tend to take a fairly radical position when there's radical rules, in our minds, in front of us. . . .;[35]
>
> For the CLECs, you start to go down a slippery slope, I think, when you start putting regulations on the CLECs;[36] and
>
> [T]his is definitely something that we do not have in place today, and that would require a higher regulatory burden on a smaller company.[37]

The bottom line, quite simply, is that the CLECs do not appreciate the fact that the Proposed Rules will apply to them.

Having said that, nobody knows better than BellSouth that the process of filing and reviewing special contracts can consume a great deal of the time and resources of both the service provider and the TRA. Based on the information in the public record and the comments of the CLECs, the TRA could easily decide to eliminate any filing requirements and/or to impose no artificial limits on termination charges. If, after reviewing the comments presented in this docket, the TRA determines

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NEXTLINK began offering a service known as "The Worx" before it filed the tariff for that service with the TRA as required by Rule 1220-4-8-.07 and section 4.1 of NEXTLINK's Tennessee Tariff No. 1.

33 Comments of AT&T (Tr. at 16) (emphasis added).

34 Comments of MCI-WorldCom (Tr. at 18) (emphasis added).

35 Comments of Time-Warner (Tr. at 35) (emphasis added).

36 Comments of Time-Warner (Tr. at 65) (emphasis added).

37 Comments of ITC^DeltaCom (Tr. at 38) (emphasis added).

that there is no need for the Proposed Rules, then they should not be imposed upon the CLECs, the incumbents, or any other public utility. If the TRA determines that some sort of rules are necessary, those rules should apply to the CLECs, the incumbents, and any other public utility. As explained below, however, neither common sense nor state law permit exempting the CLECs from such rules.

II. STATE STATUTES REQUIRE THAT THE PROPOSED RULES APPLY TO ALL PUBLIC UTILITIES AND NOT JUST TO INCUMBENTS.

As noted above, the comments presented by the CLECs during the public hearing do not support their request that the Proposed Rules -- or any portion of them -- be applied only to incumbents. Nor do the provisions of state statutes support that request. To the contrary, state statutes require that any such rules be applied to all public utilities alike.

A. State statutes treat incumbents differently than they treat CLECs only in a few distinct and plainly specified areas.

The CLECs have gone to great lengths to create and perpetuate the myth that Tennessee statutes grant the TRA more power and impose upon it more duties with regard to incumbents than with regard to CLECs.[38] As explained below, however, this myth has no basis in the language of Tennessee statutes. With very few exceptions, none of which apply to the Proposed Rules, Tennessee statutes apply equally to all public utilities and to all telecommunications service providers.

When the General Assembly passed the 1995 Act, it adopted an explicit definition of the term "incumbent local exchange telephone company." *See* T.C.A. §65-4-101(d). When the General Assembly intended for a statutory provision to apply specifically to incumbents, therefore, it explicitly used this new definition it had just created in the language of the provision. As it turns out, there are only a handful of statutory provisions in Chapters 4 and 5 of Title 65 which apply only to incumbents.

[38] The CLECs participating in the Memphis Networx docket, however, quickly abandoned this myth when it suited their purposes to do so. *See* Section II.C below.

Moreover, when such a provision places a restriction upon incumbents, the restriction is directly related to the rates incumbents may charge for their services.

Section 65-4-101(g), for example, defines an incumbent's "current authorized fair rate of return," which is then used in establishing the initial parameters of an incumbent's price regulation plan. *See* T.C.A. §65-5-209(c),(j). The first three sentences of section 65-5-208(c) establish the minimum rates an incumbent may charge for its competitive services, and section 65-5-208(d) establishes the maximum rates an incumbent may charge for new non-basic services offered after June of 1995. Section 65-5-208(a) classifies an incumbent's services as either basic or non-basic services for the purposes of determining the timing and magnitude of permissible rate increases under a price regulation plan. Section 65-5-209 allows incumbents to operate under a price regulation plan and establishes guidelines for the rates that may be charged pursuant to a price regulation plan. Section 65-5-209(d) provides a method for establishing the initial rates for new interconnection services provided by incumbents. Section 65-5-209(i) allows incumbents to establish depreciation rates without TRA approval, and section 65-5-209(k) provides the conditions under which incumbents operating under price regulation are required to maintain their commitment to the FYI Tennessee master plan.[39]

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[39] In addition to these provisions, the term "incumbent" appears in six other statutes in Chapters 4 and 5 of Title 65: section 65-4-101(c) defines "telecommunications service provider" as including incumbents; section 65-4-124(d) provides that the adoption of a price regulation plan for an incumbent is not dependent upon the promulgation of administrative rules; section 65-4-201(c) requires that the incumbent receive notice of a CLEC's request for a certificate of convenience and necessity; section 65-4-201(d) insulates small incumbents from competition in certain circumstances; section 65-5-207(c)(2) requires the TRA to consider provision of universal service by incumbents as well as other service providers if it creates an alternative universal support mechanism; and section 65-5-213(a)(2) exempts small incumbents from contributing to the small and minority telecommunications business assistance program fund in certain circumstances. None of these statutory provisions impose any restrictions on incumbents.

These are the only statutory provisions that apply specifically to incumbents, and the Proposed Rules already take these incumbent-specific requirements into account. Proposed Rule 1220-4-2-.59(5)(a)(1), for example, expressly requires incumbents operating under price regulation -- and only incumbents operating under price regulation -- to file cost justification addressing the price floor and to file revenue price-outs. *See* Proposed Rule 1220-4-2-.59(5)(a)(1). These are the only provisions of the Proposed Rules that apply uniquely to incumbents, and these are the only provisions of the Proposed Rules that state statutes allow to be applied uniquely to incumbents.

The remaining provisions of the Proposed Rules, however, do not address the implementation of price regulation plans or the rates that can be charged for telecommunications services. Instead, the remaining provisions of the Proposed Rules address the terms and conditions under which service is offered and the information a telecommunications service provider must supply to the TRA when it files a special contract or a tariff term plan. As explained below, the statutes addressing these matters do not differentiate between incumbents and CLECs. Instead, the statutes addressing these matters apply generally to all public utilities or to all telecommunications service providers. With regard to these matters, therefore, the TRA has the same powers, duties, and responsibilities with regard to CLECs as it has with regard to incumbents.

B. With the few specific exceptions discussed above, Tennessee statutes grant the TRA the same powers and impose upon it the same responsibilities with regard to CLECs as with regard to incumbents.

With the exception of the specific statutes discussed above, the statutes governing the regulation of telecommunications in Tennessee apply to incumbent local exchange telephone companies, competing telecommunications service providers, interexchange carriers, and any other person or entity offering telecommunications services to the public. Most of the statutes in Chapters 4 and 5 of Title 65, for example, apply to each and every "public utility" operating in the State. As used

in these statutes, the term "public utility" is defined as including "every individual, copartnership, association, corporation, or joint stock company, . . . that own, operate, manage or control, within the state, any . . . telephone, telegraph, telecommunications services, or any other like system, plant, or equipment . . . ." *See* T.C.A. §65-4-101(a)(emphasis added). In light of this broad and inclusive definition, it is clear that statutes applicable to "public utilities" are as applicable to CLECs as they are to incumbents. Among the statutory provisions that apply to all telecommunications service providers operating in the State of Tennessee are the following:

1. No public utility may adopt, maintain, or enforce any regulation, practice, or measurement that is unjust, unreasonable, unduly preferential, or unduly discriminatory (§65-4-115);

2. The TRA may investigate any matter concerning any public utility (§65-4-117(1));

3. The TRA may fix just and reasonable standards, classifications, regulations, practices or services to be furnished, imposed, observed and followed by any public utility (§65-4-117(3));

4. The TRA may assign employees to investigate, hear, and adjust individual or general complaints against any public utility (§65-4-119);

5. The TRA may impose $50 penalties on any public utility for noncompliance with orders, judgments, findings, rules, or requirements of the TRA (§65-4-120);

6. No public utility may engage in prohibited discriminatory practices (§65-4-122(a));

7. No public utility may charge more than a just and reasonable rate for service (§65-4-122(b));

8. The TRA has the power to fix the just and reasonable rates to be charged by any public utility (§65-5-201); and

9. The TRA has the power to require filing of tariffs by all public utilities (§65-5-202).[40]

[40] A more complete summary of the statutory provisions that apply to all telecommunications service providers is attached as Attachment 4.

Clearly, the 1995 legislation did nothing to alter the fact that among other things, incumbents and CLECs alike are required to offer services under rates, terms, and conditions that are just, reasonable, and non-discriminatory.

C. Because the TRA has the same duties and responsibilities to ensure that all telecommunications service providers offer services under rates, terms, and conditions that are just, reasonable, and non-discriminatory, the TRA must employ the same method of carrying out these duties and responsibilities with regard to all telecommunications service providers.

As explained above, the TRA is charged with the same responsibility of ensuring that the rates, terms, and conditions of all telecommunications offerings in the State of Tennessee -- including the offerings of CLECs and incumbents alike -- are just, reasonable, and non-discriminatory. If the TRA decides that a combination of competitive forces and the ability of aggrieved customers to file complaints with the TRA is a sufficient method of carrying out these responsibilities, then all telecommunications service providers should be allowed to enter special contracts without filing the contracts or submitting them to the TRA for approval. If the TRA decides that it must review special contracts in order to carry out these duties and responsibilities, then all telecommunications services providers should be required to file such contracts with the TRA. This is true both as a matter of common sense and as a matter of law.

For instance, if the state decides that each homebuyer should be responsible for determining the safety of the home's electrical wiring, then no seller should be required to submit his or her home to a wiring inspection by a state official. If, on the other hand, the state decides that homes that are sold must pass a state wiring inspection, then the same inspection standards should apply to all homes that are sold. Moreover, each buyer should expect the inspection of the house he or she is buying to be as thorough as the inspection of the house any other person is buying. Clearly, no buyer should expect to

hear that his or her house burned because the same inspection that detected (and resulted in the correction of) faulty wiring in the house his neighbor bought was not performed on the house he bought.[41] Similarly, all Tennessee customers should have the same protection from any rules that the TRA may decide to adopt, regardless of which company provides the service.

Tennessee law recognizes this common-sense notion that agencies must apply a statute even-handedly to all persons or entities that are subject to the statute. In *Sanifil of Tennessee, Inc. v. Solid Waste Disposal Control Board*, 907 S.W.2d 807, 811 (Tenn. 1995), for example, the Supreme Court of Tennessee held that "[w]hile having the power to act does not mandate action, we find that in the case of regulations affecting private business, every effort must be made to apply regulations consistently and fairly." Tennessee's public policy on telecommunications affirms this concept by stating that "the regulation of telecommunications service providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider . . . ." *See* T.C.A. §65-4-123 (emphasis added).

When it is in their best interest to do so, even the CLECs recognize that the general provisions discussed above apply to incumbents and CLECs alike. The CLECs participating in the Memphis Networx hearing, for instance, vehemently argued that the last sentence of section 65-5-208(c), which allows the TRA to adopt rules or issue orders to prohibit various anti-competitive practices, is not

[41] Similarly, if the TRA decides to review certain information regarding an incumbent's special contracts, the customers of a CLEC should expect the TRA to review the same information regarding the CLEC's special contracts. Assume, for example, that an incumbent files a special contract with the TRA and that the TRA approves the contract on the condition that the incumbent modify a specific provision in the contract. If a CLEC later places the identical provision in one of its special contracts, the CLEC's customer (or the public) has every reason to expect that the TRA will require the CLEC to make the same modification for the benefit of its customer (or the public) as the incumbent was required to make for the benefit its customer (or the public). It would be quite difficult to explain to the CLEC's customer (or the public) that the TRA did not order the modification of the provision because it never even looked at the CLEC's contract in the first place.

limited in its application to incumbents. During those proceedings, a dispute arose regarding the wording of Issue No. 3. Memphis Networx proposed the following language for that issue:

> Whether the (sic) MLGW and Memphis Networx have complied with the provisions of T.C.A. 7-52-401 through 405, to the extent applicable for TRA review, and what conditions or reporting requirements, if any, are necessary to ensure compliance.

See Tr. of February 22, 2000 Pre-Hearing Conference at 17. Time Warner and NEXTLINK wanted to add the word "rules" between "conditions" and "or reporting requirements," and Memphis Networx opposed the addition. *See Id.* In explaining why Time Warner and NEXTLINK wanted to add the word "rules," NEXTLINK's counsel, speaking on behalf of both NEXTLINK and Time Warner, stated:

> [W]e reserve the right to be able to suggest to the agency that rather than handling these applications from municipal electrics on a case-by-case basis and in each one trying to negotiate the applicable accounting safeguards and reporting requirements, that the agency, pursuant to [T.C.A. §65-5-] 208(c), adopt rules concerning cross-subsidization relationships to affiliated entities and other anticompetitive practices, that such rules would be applicable to all municipal electrics who apply to get into the telecommunications business.

Tr. at 18-19. Time Warner and NEXTLINK, therefore, have publicly taken the position that the TRA's authority to adopt rules and issue orders prohibiting specific and general anti-competitive practices extends not only to incumbent local exchange companies, but also to competing telecommunications services providers.

Like Time Warner and NEXTLINK, the TRA itself has acknowledged that this provision is not limited to incumbents. The brief the TRA filed with the Court of Appeals in the BSE docket, for instance, states that "Tenn. Code Ann. §65-5-208(c) authorizes the TRA to take action to protect against various forms of anti-competitive behavior on the part of the public utilities subject to TRA regulation . . . ." Brief at 27 (emphasis added). As noted above, the term "public utilities" includes all providers of telecommunications services.

Tennessee law, therefore, clearly does not allow rules which would require incumbents to submit their special contracts for review while allowing CLECs to enter special contracts without so much as filing them with the TRA. Such a rule would violate both the common law requirement that "in the case of regulations affecting private business, every effort must be made to apply regulations consistently and fairly," *see Sanifil of Tennessee, Inc. v. Solid Waste Disposal Control Board*, 907 S.W.2d 807, 811 (Tenn. 1995), as well as the statutory requirement that "the regulation of telecommunications service providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications services provider . . . ." *See* T.C.A. §65-4-123 (T.C.A. §65-4-123)(emphasis added). If the TRA decides that certain information is necessary to ensure that an incumbent is offering services under rates, terms, and conditions that are just, reasonable, and non-discriminatory, the same information also is necessary to determine whether a CLEC is offering services under rates, terms, and conditions that are just, reasonable, and non-discriminatory under the exact same statutes. Any filing requirements incorporated into the new rules, therefore, must apply equally to all telecommunications service providers.

III. THE LIMITS ON TERMINATION CHARGES SHOULD APPLY EQUALLY TO ALL TELECOMMUNICATIONS SERVICE PROVIDERS.

The past several months have been fraught with speculation that "full buyout" termination charges may have the effect of creating a barrier to entry into the local telephone market by discouraging or prohibiting the ability of customers to select different service providers. The concern has been that "full buyout" termination charges may tie up customers in long-term special contracts so that new entrants are not able to offer services to such customers.[42] To the extent that these concerns

[42] The available information casts this speculation regarding termination charges into serious doubt. For instance, "[i]t is a matter of public record that as of June 30, 2000, BellSouth had approximately 92% of the total access lines and approximately 77% of the business access lines in its

apply, they apply regardless of the person or entity that applies such a termination charge. *Cf.* Concurring and Dissenting Opinion in Docket No. 00-00170 at 5 (suggesting that the dissent "do[es] not fundamentally oppose the efforts of the agency to establish a rule targeted to industry-wide CSAs . . . .")(emphasis added).

The evidence presented during the hearings in Docket No. 98-00599 clearly demonstrates that any concerns regarding termination charges should be addressed on an industry-wide basis. Time Warner's witness, for instance, candidly acknowledged that Time Warner has "full buyout" termination charges in its tariffs. *See* Transcript of Hearing in Docket Nos. 98-00559, 99-00210, and 99-00244, Vol. II.A at 62 ("Q: Now, the termination liability from the tariff that you referred to earlier -- and I think the example you gave was if you have a five-year contract and you cancel after one year, you pay the remaining four years; is that correct? A. Yes."). Additionally, NEXTLINK's witness testified that NEXTLINK would experience the same practical, real-world difficulties winning the business of a customer who ordered services under Time Warner's tariffed four-year term as it does winning the business of a customer who has signed a tariffed term contract with BellSouth. Tr. Vol. II.B at 94; Tr. Vol. II.C at 140-141. Finally, the Consumer Advocate Division's witness unequivocally testified that he has the same concerns with the tariffed termination liability provisions in the Intervenors' tariffs as he has with the tariffed termination liability provisions in BellSouth's tariffs. Tr. Vol. II.D at 332-333.

Clearly, the concerns associated with "full buyout" termination charges exist regardless of whether an incumbent or a CLEC is applying the charge. Thus any limitation on termination charges

traditional Tennessee territory." *See* Concurring and Dissenting Opinion in Docket No. 00-00170 at 2. The 92% figure is to be expected, given that the majority of BellSouth's access lines are residential lines and CLECs have focused most of their efforts on the business market in Tennessee. In that market, however, BellSouth has only approximately 77% of the access lines. In other words, despite the speculation surrounding termination charges, the CLECs have won nearly 25% of the customers who were feared to have been walled off by these purported "barriers" to entry.

should apply to all termination charges, regardless of the identity of the entity applying them. Any contrary result would improperly perpetuate an unfair competitive advantage in a fiercely competitive market.

IV. THE TRA SHOULD REJECT THE CLECs' "NO RULES PLUS" PROPOSAL.

Under the CLECs' "no rules plus" proposal, "CLECs would have no rules regarding CSAs at all,"[43] and there would be no filing requirements for incumbents.[44] Instead, "for the ILECs, the only rules to apply to them are the termination liability language in the proposed rule and a three-year contract or term limit."[45] As noted above, however, to the extent that the use of termination charges and term contracts by an incumbent hinders a CLEC's ability to win customers from the incumbent, the use of termination charges and term contracts by a CLEC would likewise hinder another CLEC's ability to win customers from the first CLEC. To the extent that the use of termination charges and term contracts by an incumbent is bad for its customers, the use of termination charges and term contracts by a CLEC is bad for its customers. There simply is no basis in fact or in law for applying any portion of the proposed rules to incumbents but not to CLECs.

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[43] Comments of Time-Warner (Tr. at 34). *See also* Comments of Time-Warner (Tr. at 64)("The proposed no-rules-plus approach would be that the CLECs, we don't have any filing requirements, there's no rules that apply to us.").

[44] Comments of Time-Warner (Tr. at 35)("They [ILECs] would not have any filing requirements.").

[45] Comments of Time-Warner (Tr. at 34-35). *See also* Comments of Time-Warner (Tr. at 64)("For the ILECs, the only rule that applies is having the termination liability language that's in the proposed rule and a three-year limit on contracts or term plans.").

V. THE TRA SHOULD REJECT ANY SUGGESTION THAT IT RETROACTIVELY APPLY THE PROPOSED RULES TO TARIFFED TERM PLANS THAT HAVE ALREADY BEEN SIGNED, AND IT SHOULD REJECT ANY "FRESH LOOK" SUGGESTION.

One CLEC appears to suggest that the TRA apply any limits on termination charges that may be adopted in this docket to tariffed term plans that were signed in the past.[46] Another CLEC suggests that it may not oppose "a limited application of fresh look contractual window . . . ."[47] For the reasons set forth below, the TRA should reject any suggestion that it either attempt to retroactively apply any limits on termination charges that may be adopted or that it adopt a "fresh look" approach.

First, rulemakings are, by their very nature, forward-looking proceedings designed to adopt rules that will apply prospectively. Clearly, the TRA may not pass new substantive requirements and attempt to apply the requirements to actions that took place before the requirements were adopted. As noted by the Tennessee Court of Appeals, even when the General Assembly itself passes substantive amendments to a statute, those amendments apply only prospectively -- not retroactively:

> amendatory acts that make substantive, as opposed to procedural, changes in existing law must be applied prospectively. Thus, like other statutes making substantive changes in existing law, we will not apply the 1995 amendments to Article 3 to a transaction occurring before the amendments' effective date.

Ingram v. Earthman, 993 S.W.2d 611, 624 (Tenn. Ct. App. 1998), *cert. denied* 120 S.Ct. 445 (1999). The TRA, therefore, must reject any suggestion that it apply any limits on termination charges it may adopt to agreements that were entered before such limits were adopted.

In arguing for such impermissible retroactive application, NEXTLINK suggested that the TRA has determined that "full buyout" termination charges in approved tariffs are unenforceable. That simply is not true. In Docket No. 98-00599, the CAD and the participating CLECs argued against

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46 *See* Comments of NEXTLINK, now known as XO Communications (Tr. at 69-74).

47 *See* Comments of Sprint (Tr. at 11).

application of the full buyout provisions in BellSouth's existing tariffs, claiming, among other things, that such provisions were part of a "double penalty" for customers who signed volume and term CSAs with BellSouth. The Post-Hearing Brief BellSouth filed in that Docket -- in a section titled "[t]he termination liability provisions in BellSouth's approved tariffs, which have the effect of law, are not penalties" -- squarely refutes these attacks on BellSouth's approved tariffs, *see* Post-Hearing Brief of BellSouth Telecommunications, Inc. at 12-16, and the TRA ruled against these attacks.

NEXTLINK's claims are further refuted by the fact that the TRA has approved full buyout termination charges since its decision in Docket No. 98-00599. On October 23, 2000, for example, the TRA entered its "Order Granting Approval of BellSouth Contract Service Arrangement (TN 00-2578-00)" in Docket No. 00-00504. That Order notes that "[i]f the customer terminates the CSA prior to the expiration of the term of the contract, the termination provisions require the customer to pay BellSouth the previously waived nonrecurring charges, contract preparation fees of $617.00, and one hundred percent (100%) of the remaining monthly contract charges." Order at 2.

Additionally, NEXTLINK's claims regarding the enforceability of BellSouth's approved tariffed termination charges are squarely refuted by the Tennessee Supreme Court's decision in *Guiliano v. Cleo, Inc.*, 995 S.W.2d 88 (Tenn. 1999). In *Cleo*, the Supreme Court affirmed the enforcement of a "full buyout" termination charge in a contract even though it resulted in a financial windfall to the party enforcing the charge. NEXTLINK's arguments, therefore, are no different than the arguments it unsuccessfully raised in Docket No. 98-00599, and they are as invalid now as they were then.

Finally, the "fresh look" suggestion is one that the TRA has already thoroughly considered and rejected. In Docket No. 98-00046, several CLECs asked the TRA to adopt "fresh look" rules. As thoroughly addressed in the Motion to Dismiss that BellSouth filed in that docket, the TRA has no

statutory authority to adopt such rules. Moreover, even if it had such authority (which it does not), imposing a "fresh look" requirement would violate several provisions of the State and Federal constitutions. Finally, the policy arguments presented by the CLECs in that docket have even less merit now than they did then, especially in light of the fact that the CLECs now have 25% of the business market in Tennessee. The TRA, therefore, should reject any "fresh look" suggestions.

VI. IF THE TRA ADOPTS THE FILING REQUIREMENTS SET FORTH IN THE PROPOSED RULES, IT SHOULD MAKE THE FOLLOWING MINOR MODIFICATIONS TO THOSE REQUIREMENTS.

In light of the comments presented during the public hearing and other information in the public record, the TRA may conclude that filing information regarding special contracts simply is not necessary. To the extent that the TRA considers filing requirements, however, BellSouth proposed the following modifications to the Proposed Rules.

First, Rule 1220-4-2-.59(5)(a)(2)(i) requires all service providers to file, among other things, the name and the address of the customer as a publicly available document. This requirement, however, is inconsistent with the spirit of the CPNI provisions of the Federal Telecommunications Act of 1996. More specifically, the Act establishes a general federal policy against the public disclosure of information that "relates to the quality, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier . . . ." *See* 47 U.S.C. §222(f)(1)(A). In light of the other information that is required to be filed under subsection (5)(a)(2) of the Proposed Rules, BellSouth believes that the harm from deviating from this federal policy outweighs any benefit that is gained from publishing the name and address of the customer. The TRA, therefore, should delete this provision of the Proposed Rules and simply require the carrier to provide the name and address of the customer to the TRA upon request.

Similarly, Rule 1220-4-2-.59(5)(a)(1) requires incumbents operating under an approved price regulation plan to file certain cost information with the TRA. Like any other telecommunications service provider, BellSouth treats its cost information as proprietary. BellSouth, therefore, urges the TRA to take appropriate steps to ensure that any cost information filed pursuant to this rule would be treated as proprietary and not disclosed publicly.

CONCLUSION

If the TRA decides that a combination of competitive forces and the ability of aggrieved customers to file complaints with the TRA is a sufficient method of carrying out its statutory responsibilities regarding telecommunications service providers, then all telecommunications service providers should be allowed to enter into special contracts without filing the contracts or submitting them to the TRA for approval. If the TRA decides that it must review special contracts in order to carry out these responsibilities, then all telecommunications services providers should be required to file such contracts with the TRA. Similarly, any limits on termination charges in special contracts and/or tariff term arrangements must apply prospectively, and they must apply to all telecommunications service providers.

Respectfully submitted,

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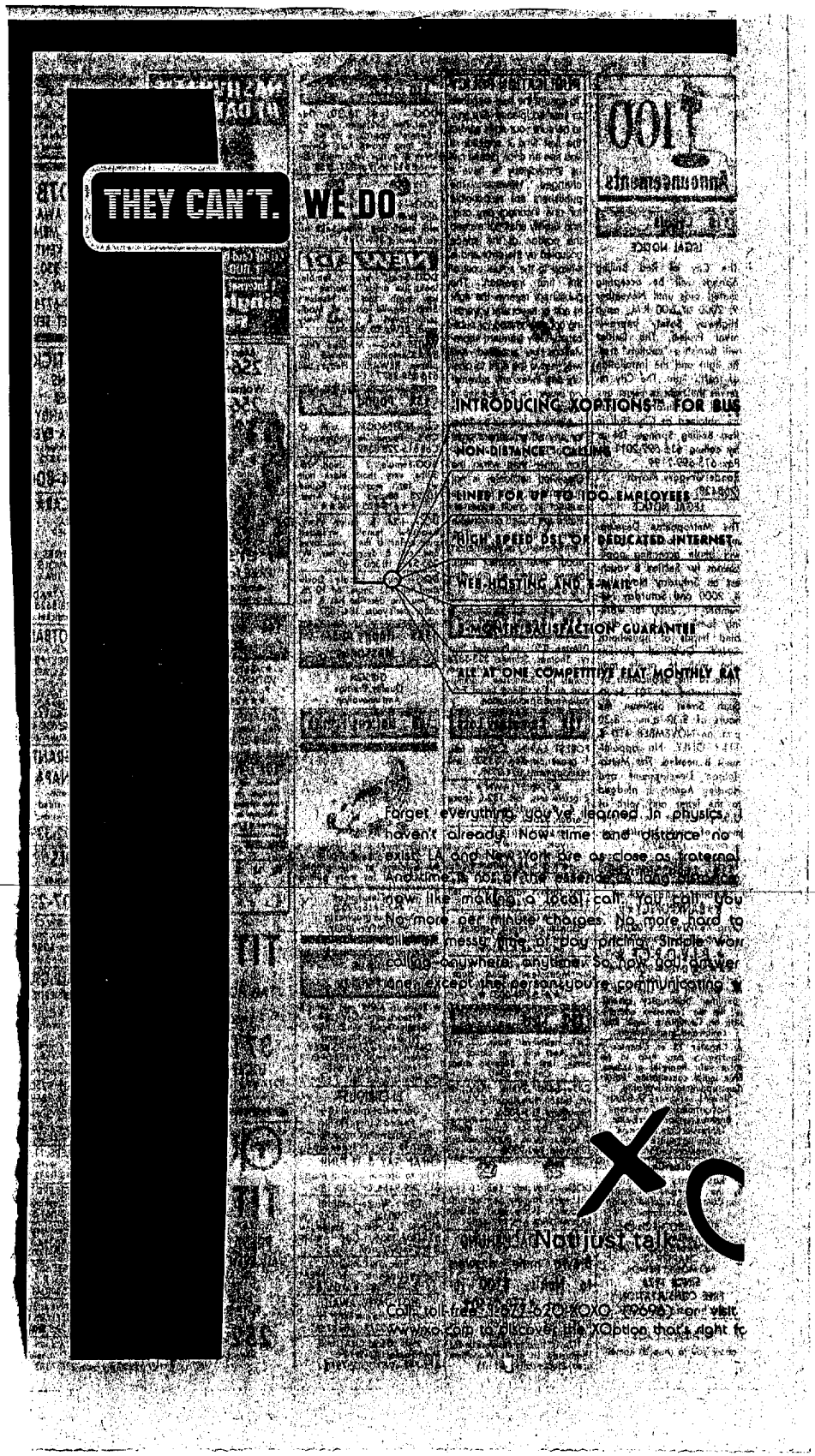
ATTACHMENT 1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Prepared for: Women's Care
Prepared by: Bill Davenport

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- No charge for Caller ID
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- No charge for call forwarding
- 3,600 minutes free of long distance
- 1 Meg Continuous Internet Connection
- Free web hosting (up to 20 megs)
- 20 Free Email addresses
- Free customized web page development assistance
- Domain Name (www.yourcompanyname.com)

Long Distance Charges (usage over free minutes)

- $0.07 per minute if you spend $0-$250 (interstate, intrastate, inbound & outbound)
- $0.06 per minute if you spend $251-$1,000 (interstate, intrastate, inbound & outbound)

Monthly Fees

$25.00 per month maintenance fee if TriVergent supplies the router to utilize the high speed Internet connection on a LAN.

Installation Charges

$200.00 with a 36 month Agreement
$400.00 with a 24 month Agreement
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$200.00 credit towards installation if you let TriVergent help you design or transfer your web site

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6	1200	256k	10	$495
7	1400	256k	10	$535
8	1600	256k	10	$575
9	1800	256k	10	$615
10	2000	256k	10	$655
11	2200	256k	10	$695
12	2400	256k	10	$735
13	2600	256k	10	$775
14	2800	256k	10	$815

General

- All NewSolutions pricing is for a 2-year term.
- A $250 installation charge applies.
- Only offered in specific locations.
- Does not include FCC Access, Federal, State and Local taxes.

Local

- Extensive local calling area.
- Includes CSU/DSU, channel bank and router equipment, if necessary.
- DID circuits available.

Long Distance

- FREE 200 minutes of long distance (IntraLATA, Intrastate and interstate usage) per voice line, per account.
- Fixed rate of $.08 per minute for additional usage.
- Conference calling, Phone Card and international usage are billed at our current tariff rates.

Internet

- High-speed Internet access at 256k.
- 10 branded (yourcompany.com) e-mail accounts included.
- Additional Internet available at $45.00 per 64K.
- Additional E-mail accounts available at $2.00 per account.

ATTACHMENT 4

STATUTORY PROVISIONS APPLICABLE TO ALL TELECOMMUNICATIONS SERVICE PROVIDERS

1. The TRA has "general supervisory power, jurisdiction, and control over all public utilities" (§65-4-104);

2. The TRA may review and approve certain stock and debt issuances (§65-4-109);

3. TRA may require maintenance of a depreciation account (§65-4-110);

4. TRA may require maintenance of "books, records, and accounts so as to afford an intelligent understanding of the conduct of its business" (§65-4-111);

5. TRA may require "every such public utility of the same class to adopt a uniform system of accounting" (§65-4-111);

6. Certain leases, mergers, consolidations, and property transfers must be approved by the TRA (§65-4-112);

7. Transfer of authority to provide utility service requires TRA approval (§65-4-113);

8. TRA may require utility to provide safe, adequate, and proper service and maintain its property and equipment in a manner that allows it to do so (§65-4-114(1));

9. TRA may require utility to extend existing facilities (§65-4-114(2));

10. TRA may require utility to abandon service (§65-4-114(2));

11. Unjust, unreasonable, unduly preferential, or discriminatory regulations, practices, or measurements are prohibited (§65-4-115);

12. Unsafe, improper, or inadequate service prohibited (§65-4-115);

13. Withholding certain services prohibited (§65-4-115);

14. TRA may investigate any matter concerning any public utility (§65-4-117(1));

15. TRA may request comptroller of treasury to appraise the value of any public utility (§65-4-117(2));

16. TRA may fix just and reasonable standards, classifications, regulations, practices or services to be furnished, imposed, observed and followed (§65-4-117(3));

17. TRA may ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, or other condition of service (§65-4-117(4));

18. TRA may establish rules, regulations, specifications, and standards to secure accuracy of measurements (§65-4-117(5));

19. TRA may provide for examination of appliances used for measuring service (§65-4-117(6));

20. TRA may assign employees to hear individual or general complaints against the utility (§65-4-119);

21. TRA may impose penalties for noncompliance with orders, judgments, findings, rules, or requirements of the TRA (§65-4-120);

22. Discrimination and preferences prohibited (§65-4-122(a));

23. Charging more than just and reasonable rates is prohibited (§65-4-122(b));

24. May not give undue preference, advantage, prejudice, or disadvantage to any person or locality, to any description of traffic or service (§65-4-122(c));

25. Must pay inspection fees to the TRA (§65-4-301 to –302);

26. Must file statement of gross receipts with TRA (§65-4-305);

27. Do not call statutes apply to everyone (§65-4-401(3));

28. TRA has power to fix just and reasonable rates (§65-5-201);

29. TRA has power to require filing of tariffs (§65-5-202);

30. Have ability to put rate increases into effect if TRA has not issued order within six months (§65-5-203);

31. Must comply with the operator-assisted dialing statutes (§65-5-206);

32. Must contribute to the support of universal services (§65-5-207);

33. The public policy of the state is that "the regulation of telecommunications services and telecommunications service providers shall protect the interests of consumers without unreasonable prejudice or disadvantage to any telecommunications service provider . . . ." (§65-4-123);

34. All telecommunications services providers must provide non-discriminatory interconnection to their public networks under reasonable terms and conditions (§65-4-124(a) & (b));

35. All telecommunications services providers must provide their customers a white page directory listing, access to 911 emergency services, free blocking for 900/976 type services, access to telecommunications relay services, Lifeline and Link-Up, and educational discounts existing on June 6, 1995 (§65-4-124(c));

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

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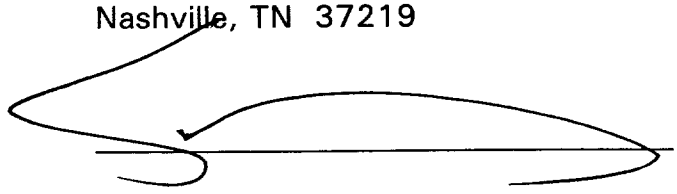

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36. The slamming statutes apply to all telecommunications services providers (§65-4-125(a));

37. The cramming statutes apply to all telecommunications services providers (§65-4-125(b)); and

38. Must file a small and minority-owned telecommunications service provider business participation plan (§65-5-212).