Sprint

James B. Wright
Senior Attorney

14111 Capital Boulevard
Wake Forest, NC 27587-5900
Mailstop NCWKFR0313
Voice 919 554 7587
Fax 919 554 7913
james.b.wright@mail.sprint.com

May 16, 2002

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

RE: *Rulemaking Proceeding, Proposed Amendments to Regulations for Telephone Service Providers Service Standards Docket No. 00-00873;* Sprint's Brief

Dear Mr. Waddell:

Enclosed for filing in the above proceeding are the original and thirteen copies of the Brief of United Telephone-Southeast, Inc. and Sprint Communications Company L.P.

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

Sincerely,

James B. Wright

James B. Wright

Enclosures
CC: Laura Sykora
Kaye Odum

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In Re: In the Matter of Notice of Rulemaking Amendment of Regulations for Telephone Service Providers

Docket No. 00-00873

BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P. AND UNITED TELEPHONE – SOUTHEAST, INC.

Pursuant to the Tennessee Regulatory Authority's ("Authority" or "TRA") May 9, 2002 Notice of Filing, United Telephone-Southeast, Inc. ("United") and Sprint Communications Company L.P. (jointly "Sprint") hereby file their brief regarding the issues raised at the May 7, 2002 Authority Conference with respect to the May 2, 2002 draft of the Rules ("May 2 Rules").

Issue: Can the TRA lawfully require a telecommunications service provider ("TSP") to automatically give a third party a credit/waiver when the TSP fails to meet a service standard or quality service measurement ("QSM") under the May 2 Rules?

A. Unlawful Penalty. Section 1220-4-2-.04 and Section 1220-4-2-.17 of the May 2 Rules require a TSP to automatically issue a credit or waive a portion of a charge to a customer in certain instances when a service standard or quality service measurement is missed. Although these sections contain references to statutory authority, none of the referenced statutes indicate the TRA has authority to require a provider to waive tariffed charges or to credit any amount to a third party. Such a requirement is unlawful absent specific statutory authority, since forcing a company to credit or forgo receipt of funds otherwise due would be confiscation.

Clearly the TRA can not do by rule what it is not authorized to do by statute. This is expressly dealt with in TCA Section 65-2-102(2) which states "The authority is empowered to adopt rules implementing, interpreting, or making specific the various laws which it enforces or administers; provided, that the authority shall have no power to vary or deviate from those laws, nor to extend its power or jurisdiction to matters not provided for in those laws."

The QSM penalties contained in Rule 1220-4-2-.17 are especially troubling. This is true because of the total absence of any legal basis to support them. The QSMs, while couched in terms of automatic customer credits, are obviously intended to be punishment to a telephone company that fails to meet the proposed new service standards. The Legislature, however, has explicitly circumscribed when the TRA has authority to penalize carriers who violate its rules. TCA Section 65-4-120 provides for a penalty of up to $50.00 per violation per day for violating an order or rule of the TRA which, **after hearing, is paid to the Authority and placed in the public utility account.** TCA Section 65-4-125 dealing with slamming and cramming provides for penalties up to $1,000, which must be **paid to the Authority and placed in the public utility account.** TCA Section 65-4- 405 dealing with violations of the Do-Not-Call Register permits the TRA to impose a penalty of up to $2,000 which must be **paid to the Authority and deposited in the public utilities account.** No other penalties are authorized by statute. In each instance above, the enabling statute requires the payment be made to the TRA, not to a third party. Therefore, there does not appear to be any authority granted to the TRA to impose the customer penalties contained in the proposed service standard and QSM rules.

B. Illegal award of Damages. The automatic credits/waivers are further deficient in that they are arbitrary if they are considered as a form of compensation for damage. The amounts are unrelated to any known expense or damage a customer may incur. In fact the record in this case does not contain a single piece of information reflecting what damage the credit/waiver is intended to redress or remedy. The credit amounts are sometimes $5 per day, sometimes $10 per day. In view of the lack of supporting record data, they could just as easily have been written to be $1 an hour, $50 per month or any other amount. Although it could be argued that the QSMs are damage awards, that argument necessarily fails as the QSMs require customer credits to be issued to customers without any showing of harm. In any event, it does not appear that the TRA has authority to award damages.

In some cases, the credits/waivers appear to be unreasonably discriminatory as well. For example, with respect to trouble reports, a customer could have reported trouble for nine consecutive months, but if done in months the standard was not exceeded, the customer would not be entitled to a credit. A neighbor could experience a trouble the next month and be entitled to a credit. It would be impossible for a service representative to explain such disparate treatment to a customer. Payments to the TRA as authorized under TCA Section 65-5-120 rather than seemingly random credits to customers would avoid such discrimination.

The automatic credits/waivers appearing in proposed Rule Sections 1220-4-2-.04 (1)(c) and (2) dealing with outages and missed appointments suffer from the same infirmities. There is no statutory basis for automatic credits and waivers and the amounts of the penalties are arbitrary. In addition, Rule Section 1220-4-2-.04, subsection (2)

appears to require the charge be waived even if the TSP is not at fault, such as by an act of God, or even worse, if the customer is at fault. Requiring a TSP to incur service installation expenses, yet not be able to collect TRA approved revenue because the customer is not available at the agreed time, constitutes blatant confiscation.

C. Unlawful Rate Represcription. Sprint realizes that the TRA has general rate-making authority and that the adequacy of the service provided is an element to be considered in setting rates. The statutory references to this authority, however, contemplate service adequacy being a factor to be considered in a general rate-making proceeding rather than as a trigger for after-the-fact automatic credits for price regulated companies. *See* TCA Section 65-5-201. To the extent that the QSM penalties are based on a rate-making function, they result in confiscatory rates for price-regulated companies such as United. Unlike rate of return regulated companies, price regulated companies do not have an ability to seek increased rates to recover increased expenses. Requiring a price regulated telephone company to incur extra expense (or forgo revenue to which it is otherwise entitled) amounts to confiscation if the company has no lawful way to recover the added expense or lost revenue. That is exactly the position in which United would be if the TRA adopts the proposed automatic credits/waivers. The TRA is ordering United to effectively reduce its rates when it must absorb unknown amounts of credits/waivers, yet it has no ability to recover the loss, resulting in less than just and reasonable rates for United.

Even if United were not price regulated, the automatic credits and waivers would be unlawful. United has monthly rates for residential local service are as low as $8.86 per month. Thus, a QSM that reduces that rate by $10.00 per day, for example, results in a

negative rate and a purely punitive rule. United could provide perfect service for the rest of the month, but would effectively have to pay the customer for United's provisioning of the service. Clearly such consequence would be deemed confiscatory. Further, the automatic manner in which the credits/waivers under subsection .04 apply would also violate due process protections. As noted earlier, a waiver could apply even though the customer was the cause for the missed standard.

D. Assessment without a Hearing. It is noteworthy that TCA 65-4-120 requires that a hearing be held prior to imposition of the penalties authorized thereby. To the extent that the May 2 Rules purport to apply automatically and without a hearing, they appear to violate the statutory command to hold a hearing and to violate constitutional guarantees of due process. Although a company may petition for a variance from the penalties, it must be for good cause, which means the penalty is presumed valid and the burden rests entirely on the petitioning company. In addition, it is not certain whether the petitioning company is entitled to a hearing, thereby remaining statutorily deficient.

In summary, there appears to be no legal basis for adopting the proposed automatic credits/ waivers with respect to the proposed rules.

Issue: Can the TRA lawfully require a price regulated company to incur substantial additional expense to comply with the May 2 Rules when they have no alternative other than absorb the added expense?

Sprint believes that a number of the proposed rules contain provisions that will greatly increase Sprint's cost of providing services, yet there is no provision which permits Sprint to recover any portion of such added costs. The action of the TRA in

forcing such rules on companies constitutes unlawful confiscation. Examples of specific rules, which will cause substantial additional expense and confiscation, are described below.

Fifteen Day Disconnect/Twenty Day Bill Payment (1220-4-2-.06 & .14). United currently allows its customers eighteen (18) days to pay their bill and another five (5) days for disconnect notices, a total of 23 days. The May 2 Rules extend this total time period to thirty-five (35) days, a fifty (50%) percent increase. The extra disconnect notice time creates two distinct costs for Sprint. First, the time allows customers who never intend to pay their bill that much more time to run-up charges before finally being stopped. Second, even where customers do eventually pay, Sprint is further delayed in receiving payment for toll and long distance services rendered over a month ago. Again, the May 2 Rules are forcing price regulated companies to incur and absorb additional expense in the form of increased collection costs and added uncollectible amounts, yet having no method of recovering the added expense.

Disconnect for Nonpayment (1220-4-2-.06). The Authority's May 2 Rules prohibit local exchange carriers from disconnecting a customer's local service for the nonpayment of toll and nonregulated services. Current Tennessee rules make all telecommunications services deniable for nonpayment. Sprint's experience in other states that have made toll and long distance services nondeniable shows a convincing pattern of increased bad debt expenses. Such a result is to be expected since the local exchange carriers' principal means of policing literally millions of small accounts has been taken

away. As noted above, this rule would result in confiscation for price regulated companies since they have no means of recovering the lost revenue resulting from increased nonpayments.

Lifeline and Link-Up (1220-4-2-.18). Sprint believes the Authority should not expand the costs for the Lifeline and Linkup programs, particularly the requirements in subsections 1 and 7. These sections expand the list of possible participants to include categories of persons whose eligibility can not be confirmed and mandates that every new install or transfer customer be informed of Lifeline.

Added expense is forced onto companies by the extra requirements imposed by subsection 1(a) requiring verification of citizenship; subsections 1(a) (6, 7 and 8) increasing categories of persons who qualify for the reduced rates; and subsection (4) expanding the notice period to 30 days before persons no longer eligible can be moved from the discounted rate. Such requirements as subsection 7(b) will force answer times to be increased, thus increasing expenses to the company not only because of the added personnel needed to implement the additional activity, but also because answer time is a standard which can result in penalties if not met, and the added answer time will increase the risk of penalties. All such added expenses constitute confiscation for price regulated companies. In any event, such added requirements should not be implemented until after the Authority has established a funding mechanism in the universal service docket.

The cumulative effect of the additional expenses imposed on price regulated companies resulting from the new and added burdens resulting from the above-noted

May 2 Rules constitutes illegal confiscation of the companies property and for that reason should not be adopted.

Conclusion

In addition to oral and written comments filed or supported by Sprint in this rulemaking, the Company requests the TRA to consider the legal issues identified in this brief. The TRA's May 2 Rules are unlawful in requiring a TSP to automatically issue a credit or waive a portion of a charge to a customer in instances when a service standard or quality service measurement is missed. Also, requiring a price regulated company to incur and absorb substantial additional expense to comply with the May 2 Rules is confiscatory and, therefore, also illegal.

Respectfully submitted,
UNITED TELEPHONE-SOUTHEAST, INC.
SPRINT COMMUNICATIONS COMPANY L.P.

James B. Wright
Senior Attorney
14111 Capital Boulevard
Wake Forest, NC 27587-5900
Telephone: 919-554-7587

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