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November 14, 2000

By Hand

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

Re: Notice of Rulemaking Amendment of Regulations of Telephone Service Providers
Docket No. 00-00873

Dear Mr. Waddell:

Enclosed for filing in the above-captioned proceeding are an original and thirteen copies of AT&T's Comments on the Proposed Rules in the above-captioned proceeding.

If you have questions, please call me.

Sincerely,

Jim Lamoureux

Encls.

P4-14-00

BEFORE THE
TENNESSEE REGULATORY AUTHORITY

In the Matter of	)	
Notice of Rulemaking	)	Docket No. 00-00873
Amendment of Regulations for	)	
Telephone Service Providers	)	

AT&T'S COMMENTS ON PROPOSED RULES

On September 29, 2000, the Tennessee Regulatory Authority ("TRA") released its Notice of Rulemaking to consider the amendment of its rules pursuant to Tennessee Code Annotated, Section 65-2-102. These proposed rules would replace regulations in Chapter 1220-4-2 with new rules on issues such as quality of service mechanisms, customer deposits, number conservation, and toll free county-wide calling. In its Notice, the TRA scheduled a hearing to discuss the proposed rules to be held on November 16, 2000. In advance of the hearing, AT&T hereby submits the following comments regarding the proposed new rules.

As a preliminary matter, it is difficult to understand why these rules are being proposed, and thus difficult to comment on the necessity (or lack thereof) for such a substantial alteration of the rules of the Authority. No factual predicate has been submitted by the Authority or the Staff as justification for issuance of the rules, nor is AT&T aware of any specific incidents or general factual support to warrant the alteration of the rules of the Authority as proposed. Before the Authority takes any further action on the proposed rules, AT&T would request that the Authority or the Staff provide the industry with some insight as to the factual and legal basis for the proposed rules.

Consistent with this request, AT&T proposes in its comments below a procedure that it requests be followed before the Authority adopts any of the proposed rules.

§1220-4-2-.02 – Scope of Regulations

It is unclear why the Authority feels it is necessary at this time to overhaul its rules to impose upon all telecommunications carriers more stringent quality of service standards. AT&T is unaware of any incidents of diminished quality, or any other compelling evidence or data that would warrant such a major change to the Authority's rules. Moreover, such increased regulation of telecommunications is fundamentally at odds with the currently competitive and regulatory landscape. The current trend and policy paradigm in telecommunications is increased competition and lessened regulation, especially regulation of areas such as price and operations. Indeed, as long ago as April 19, 1985, the former Tennessee Public Service Commission, in Docket No. U-84-7311, found it appropriate to "waive" the application of virtually all its rules, including all service quality rules, to all interLATA carriers. The Authority has provided no justification for reversing that decision and now essentially re-regulating the performance of long distance carriers and establishing new more stringent regulations for the competitive local carriers. The unquestionable competitiveness of the long distance industry and among competitive local providers should dictate the imposition of less regulation of those carriers, not more.

§1220-4-2-.03 (7) – Records and Reports (Telephone Number Utilization Reports)

On March 31, 2000, the FCC released its Report and Order and Further Notice of Proposed Rulemaking in its Numbering Resource Optimization ("NRO Order") docket.[1]

[1] Numbering Resource Optimization, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (released March 31, 2000) ("NRO Order").

The order establishes binding federal standards and requirements for, *inter alia*, number status definitions, utilization reporting, and thousands block pooling. In its Order, the FCC ruled that states may not impose their own mandatory reporting requirements, although they may seek data "for a specific purpose, as long as these data reporting requirements ***do not become regularly scheduled state-level reporting requirements***." (Order at ¶ 76) The reporting authority granted to some states in the FCC's prior numbering waiver orders is rescinded. (Order at ¶ 76)

It is unclear from the proposed rule whether the Authority intends to require regularly scheduled reporting requirements or whether it merely provides that the Authority may, on occasion, request certain number utilization from carriers. If it is the former, then the proposed rule would appear to violate the FCC's NRO Order. Moreover, if it is the latter, there would appear to be no need to issue a rule. The TRA could simply request such information, as it does on other topics, from carriers as information requests. Nonetheless, AT&T is committed to working with the TRA to ensure efficient number utilization, as long as the TRA's requests for telephone number utilization reports are consistent with the FCC's Order as cited above.

§1220-4-2-.06 – Disconnection of Local Service

Proposed rule 1220-4-2-.06 would apparently prohibit incumbent local exchange carriers ("ILECs") and competitive local exchange carriers ("CLECs") from denying or discontinuing an end user's local service for failure to pay regulated toll charges. It would also eliminate the ability to discontinue local service for nonpayment of ***any*** non-regulated service, which would include, *inter alia,* wireless, Internet, and other

information services. **For** the reasons set forth below, AT&T urges the Authority to reject proposed rule 122-4-2-.06.

In sum, the proposed rule penalizes those telecommunication providers who do not engage in unlawful activities without punishing or deterring those service providers who do. Adopting the proposed rule would encourage irresponsible behavior and evasion of legitimate debt. It would also be quite expensive to implement, a cost that would be borne by all consumers. It would also provide a deterrent to competition, by severely restricting the ability of competitive carriers to offer bundles of service, particularly bundles that include local with toll, and bundles that include local with non-regulated services, such as wireless and internet. Finally, there has been no factual or legal basis asserted as justification for the proposed rule.

Compelling evidence reflects that the current disconnect authority of local carriers actually benefits consumers. ILECs and CLECs generally possess the legal authority to refuse or discontinue local service for nonpayment of bills -- local or toll -- provided the customer is given proper notice and allowed a reasonable time to remedy any deficiency. This rule has worked well, and no one has submitted any evidence that the rule has been abused by ILECs, CLECS, or the companies on whose behalf they deny service.

The consumer body in Tennessee benefits from the current disconnect authority, because such authority unquestionably results in lower uncollectibles, which, in turn, alleviates upward pressure on toll rates. Restricting the ILECs' and CLECs' current disconnect authority would, in all likelihood, result in an increase in the cost of telephone service to Tennessee consumers. Not only would this unfairly prejudice consumers who pay their bills in a timely manner, it would reward persons who do not pay.

Evidence abounds as to increases in uncollectibles when local termination is not allowed.[2] In Pennsylvania, Bell Atlantic reported an increase in uncollectibles of nearly 400% when its disconnect authority was restricted.[3] Other IXCs and LECs in California, New York, Texas, and Florida experienced similar increases.[4] High uncollectibles represent a cost burden that must be shared with the entire consumer body. Transferring costs generated by a small percentage of customers who do not pay their bill to the majority of customers who do pay their bill is poor public policy that the Authority should avoid.

The long-term result of adopting the proposed rule would be to transfer increases in expenses related to uncollectibles, bad debt, and administrative costs to the vast majority of customers who pay their bills on time. In fact, the change precipitated by adoption of the rule will benefit only those consumers who do not pay their bills, while penalizing the vast majority who do. High subscribership certainly depends upon keeping telecommunications services affordable for the greatest number of customers possible, including low-income customers. Saddling low income customers with the increased costs of collection and bad debt caused by non-paying customers, via increased prices for telecommunications services, is unfair and increases the chance that they may have to drop off the network.

Conversely, there is no evidence that local disconnection and toll denial adversely affect universal service. In the statistical reports published by the FCC,[5] no evidence supports the proposition that prohibiting local service disconnection would increase

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2 See, e.g. MCI Telecommunications Corporation's Comments before the New York Commission, Docket No. 12334.

3 Bell Atlantic's Reply Comments before the FCC, CC Docket 95-115, November 20, 1995, at p. 3.

4 GTE Reply Comments before the FCC, CC Docket 95-115, November 20, 1995, at p. 9.

telephone subscribership or that telephone subscribership is affected adversely by local disconnection. Nor is there credible evidence that the implementation of toll denial, replacing local disconnection, necessarily improves subscribership. Subscribership in New York and Pennsylvania increased more slowly than the national average in a period in which both states changed from local disconnection to toll denial. Conversely, Texas subscribership increased at a rate faster than the national average in a period when local disconnection was allowed.[6]

The proposed rule reflects a costly "solution" to a phantom problem that leaves paying consumers unfairly bearing the costs of its proposal. Universal service is designed principally to deal with a carrier's costs of providing telephone service. A secondary, albeit important, meaning and purpose of universal service is to support low-income customers. "Low income" is a category of need, not of behavior. Federal and state regulations mandate the availability of quality telecommunications services at just,

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[5] "Telephone Subscribership in the United States" Report by the Industry Analysis Division of the Common Carrier Bureau of the FCC released July 1998.

[6] For example, compare the experiences of the following states with each other and the change in telephone subscribership over the period from 1984 to 1995:

	1984	1995	Change	Comments
US Overall	91.6	93.9	2.3	
Texas	88.4	91.3	2.9	Allowed local disconnection throughout this period (but now allows only toll denial).
New York	91.8	92.9	1.1	Changed from local disconnection to toll denial in 10/92
Pennsylvania	94.9	96.8	1.9	Changed from local disconnection to toll denial in 1/95

There has been no increase in subscribership in Texas since eliminating local disconnection. "Telephone Subscribership in the United States," supra, Table 3 (Percentage of Households with a Telephone by State).

Moreover, toll denial, in the absence of local disconnection, would cause LECs, as well as IXCs, to bear substantial costs to develop systems to block customers from the various IXCs' networks, particularly for those customers not pre-subscribed ("PIC'd") to other IXCs; i.e., those using "dial around" products. For example, if an AT&T customer did not pay that company for toll charges, MCI and the LEC would have to develop a system to prevent that customer from changing the PIC to MCI or otherwise dialing an access code to reach and then defraud MCI. Local disconnection does not require such efforts.

reasonable, and affordable rates, rather than guaranteeing non-paying customers a free ride. Thus, Lifeline service, which offers toll blocking and prohibits local disconnection, is based on qualifying conditions that do not include not paying one's bills.

It is also important to note that ILECs and CLECs routinely work with the small percentage of end users who have payment problems and make every effort to resolve the situation before disconnecting service. ILEC and CLEC business office personnel spend substantial amounts of time arranging for extended payment plans for consumers. Typically, end users are given reasonable extensions of time for making payments, sometimes extending to several weeks or even months. Disconnection of service is not effected during pending bona fide disputes over charges. In virtually every case, local service is disconnected only when the end user does not pay, or does not make reasonable arrangements to pay, the total regulated charges.

Additionally, end users are often allowed to establish a preferred payment date in the monthly billing cycle and are given the option to make installment payments for certain more substantial charges, e.g., service connection fees, construction charges, etc. These practices make it easier for end users to budget their payments. The vast majority of end users pay their bills without any prompting from the ILEC or CLEC.

Adoption of the proposed rule also could have the perverse effect of discouraging new competitors from entering the market, because their calling packages include long distance service and their collection efforts would be made more difficult by the policy changes reflected by the proposed rule. At a minimum, it will discourage the competitive offering of service bundles that include either local service or non-regulated service. In fact, the effect of the proposed rule would be to require a new CLEC to continue to

provide service to a customer who is deliberately refusing to pay for service, even when the customer has received the benefits of the service. This policy change, rather than fostering increased competition, can only serve as a deterrent to further local market entry by new CLECs.

Prohibiting local disconnection for nonpayment of regulated toll charges would require substantial changes in the billing and collection contracts between the LECs, IXCs, and clearinghouses. Today, billing and collection services are provided via the Access Tariff for the billing of intrastate charges and via contract for the billing of interstate charges. Once a billing and collection relationship is established, the LEC bills the consumer for the long distance charges, as well as for its own charges for services. The LEC buys account receivables from an IXC, subject to recourse adjustments, or acts as a billing agent. Thus, the LEC bears the responsibility for collecting the long distance charges and remitting to the IXC the charges associated with long distance, minus its payment for providing billing and collection services. The LEC, then, has an interest in, and a legal obligation to bill and collect the charges billed on behalf of the IXC under the billing and collection arrangement in its tariffs and contracts. Since the percentage of uncollectibles would be expected to increase substantially under the proposed rule, a potentially lengthy renegotiation of these contracts with a myriad of LECs, IXCs, and clearinghouses, along with subsequent tariff revisions would be required before any policy changes could be implemented.

§1220-4-2-.15 – Disconnection of Service to a Reseller by an Underlying Carrier

Section (1)(a) of this rule discusses the notice that must be provided to resellers "if actions are not taken by a date certain to rectify any of the conditions for

disconnection found in 1220-4-2-.06(1)." This suggests that underlying carriers may only terminate resellers for conditions set forth in 1220-4-2-.06(1). However, 1220-4-2-.06(1) sets forth conditions for termination of *retail* service to end user local customers. It does not pertain to disconnection of service to resellers. The TRA should not graft conditions for discontinuance of local retail service onto the contractual relationship between underlying carriers and resellers, particularly underlying long distance carriers and long distance resellers.

Moreover, specifically with respect to notice, there are certain instances set forth in contracts between underlying carriers and resellers in which service to resellers may be terminated without notice, notably fraud. It would be particularly perverse for a rule to be adopted that allows, under the guide of a notice requirement, a fraud to be perpetuated by a reseller an additional 30 days.

The rule also requires underlying carriers to provide soft dial tone. The rule does not make clear that this requirement applies only to underlying providers of *local* service.

§1220-4-2-.15 – Prepaid Calling Cards

In sub-section (1) the sentence beginning "Such value shall…" is especially vague. This value is difficult to list due to the various charges that may be applied in different states, based on that particular state's regulations. Additionally, pre-paid cards can be used in various applications (e.g. from a payphone, from a hotel, from a residential phone). As such, it is impossible to predict where the card will be used, and each separate application may contain different costs incurred upon usage. AT&T recommends striking the sentence and replacing it with the following statement: "The

Company shall provide, either on the packaging or display materials, any applicable surcharges."

With regard to sub-section (2), in most instances, the TSP is not the actual company selling the cards. There are typically one or more levels of distributors or agents involved. AT&T recommends that the definition of a prepaid card company be added as follows: "'Prepaid Card Company' means any entity providing prepaid calling services to the public using its own or resold telecommunications network."

Consistent with other state regulations and current practices, AT&T recommends that only the registered name of the TSP appear on the card. Under current practices, all TSPs provide an 800 Toll Free customer service number printed directly on each card that directs callers to the TSP's customer service office.

AT&T recommends deleting sub-section (3) as too vague, and replacing it with the following: "Customers will receive service for the value disclosed on the pre-paid card, less all applicable usage and service charges. Lastly, AT&T recommends deleting sub-section (6) because it is duplicative of sub-section (1).

§§1220-4-2-.17 & 18 – Basic Obligation for ETCs & Quality of Service Mechanisms

The TRA defines an "ETC" as an eligible telecommunications carrier as defined in USCA Title 47, Section 2 14(e) and is certified by the Authority to receive state or federal universal service support. A "telecommunications service provider" means any provider of local exchange service as defined in Tenn. Code Ann. §65-4-.10 1(c) and includes, but is not limited to, incumbent local exchange carriers ("ILEC"), competitive local exchange carriers ("CLEC"), and resellers. As such, Sections 1220-4-2.17 (Basic Obligations for ETCs) and 1220-4-2-18 (Quality of Service Mechanisms (QSMs) for

ETCs) *do not apply to CLECs* who have not applied to receive state or federal universal service support.

Any decision to impose these requirements on CLECs, whether it be now or at some future time when a CLEC applies for ETC status, would be contrary to the deregulatory nature of competitive service. Most significantly, these requirements would require CLECs to implement new systems that are designed to measure compliance with the objectives. CLECs do not currently have systems in place that measure compliance with the service objectives for every call and every service order. The implementation of systems which are capable of tracking each and every call and service order and recording data across these calls and orders relating to issues such as completion rate, transmission loss, answertime, and order completion would be expensive and time consuming.

Moreover, in many cases, a CLECs ability to meet service quality objectives is beyond its control. As the Commission is well aware, CLECs are dependent on ILECs for the provisioning of unbundled network elements and resold services, and as the TRA is well aware recently, even for certain services associated with interconnection. It would be illogical to impose on CLECs service quality measures before the Authority establishes Performance Measures for the ILECs providing the underlying services and facilities to the CLECs.

CLECs have no ability to control the ILECs' delivery of such elements or services. With respect to competitive services, the market is a much more efficient determinative of efficient service than regulation. As the TRA is well aware, competition in the local telecommunications market, to date, has occurred almost exclusively in the

market for business customers. In this context, any new QSM requirements merely create unnecessarily burdensome procedures for CLECs, given that the nature of the entire customer base of CLECs is such that dynamic market mechanisms already ensure compliance with service quality objectives.

Finally, the adoption of any new requirements may actually discourage the delivery of new and innovative service offerings. For example, customers may be willing to waive some or all of the requirements where they are given price or other incentives for such waiver.

§1220-4-2.21 – Toll Free County-Wide Calling

At best this rule is unnecessary, and at worst it violates the United States and Tennessee Constitutions. T.C.A. § 65-21-14 already requires that all calls between two points in the same county shall classified as toll-free and shall not be billed to any customer. Assuming that this statute is valid, there is no reason for the TRA to adopt a rule with the same requirement. Moreover, the statute confers no authority upon the TRA for adoption of any rules implementing the statute, and no other statute confers such authority upon the TRA. In particular, no statute confers upon the TRA any power to set penalties for violation of the statute.

Further, the Tennessee Court of Appeals has already determined that forcing long distance carriers to provide service free of charge to consumers without compensation violates the United States Constitution and the Constitution of the State of Tennessee. Whether such a requirement is included in an order of the former Tennessee Public Service Commission or in a statute passed by the General Assembly is irrelevant. The

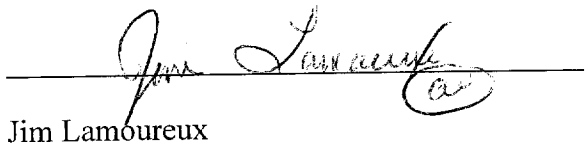
conclusion remains the same: forcing carriers to provide service without compensation is unconstitutional.

AT&T would request that the Authority not adopt this proposed rule. There is no need for it, and, it unnecessarily entangles the TRA in the issue of whether a toll free county-wide requirement violates the United States and Tennessee Constitutions.

Request for Workshops

The proposed rules represent a substantial departure from the current regulatory paradigm for competitive local providers and long distance carriers, and would have a substantial impact on the business operations of such carriers. Moreover, no factual justification has been provided as to the underlying predicate for these rules. Accordingly, rather than simply having the Staff and Authority listen to the parties at the hearing and then issue rules, AT&T requests that the TRA adopt a procedure in which the parties may discuss with Staff the basis for and intent of the rules, so that the Staff and parties may endeavor to fashion rules by dialogue rather than by hearing. AT&T would request that the TRA direct the Staff to conduct a series of workshops at which the various rules may be discussed and at which the parties may cooperate to jointly craft rules acceptable to both the Staff and the industry. AT&T believes such a process would be more open, more fair, and more likely to result in rules that properly balance the needs of Tennessee consumers and the goal of developing competition for all telecommunications services.

Respectfully submitted,



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