ASCENT
Association of Communications Enterprises

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Via Overnight Delivery

14 November 2000

Mr. David Waddell
Executive Director
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

RE: Tennessee Regulatory Authority proposed Service Quality Rules.
Docket No. 00-00873

Dear Mr. Allen,

Please find enclosed an original and thirteen (13) copies of the *Comments of the Association of Communications Enterprises* regarding TRA proposed Service Quality Rules in the above-referenced proceeding.

Questions should be directed to the undersigned.

Sincerely,

Andrew O. Isar

P 11500

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In re: TENNESSEE REGULATORY AUTHORITY PROPOSED SERVICE QUALITY RULES

Docket No. 00-00873

COMMENTS OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES REGARDING TRA PROPOSED SERVICE QUALITY RULES

The Association of Communications Enterprises ("ASCENT," f/k/a the Telecommunications Resellers Association),[1] on behalf of its members and pursuant to the Tennessee Regulatory Authority's ("TRA") September 29, 2000 *Notice of Rulemaking*, hereby comments on the TRA's proposed rules governing telecommunications service quality.

ASCENT commends the TRA's efforts to promulgate rules designed to ensure Tennessee consumers continue to receive high-quality telecommunications services in an emerging competitive market. The proposed rules are well suited for this purpose to the extent that in their application they do not inadvertently impose unreasonable expectations and burdens on competitive service providers who rely extensively on underlying carriers to meet service quality obligations. Competitive service providers who do not own, manage, or otherwise control facilities, and retain only limited influence with their underlying carriers to ensure compliance with the rules, should not bear the full brunt for an underlying carrier's failure to

[1]ASCENT, formerly the Telecommunications Resellers Association (TRA), is the international trade organization representing the interests of advanced communications firms. ASCENT's more than 725 companies and individual members provide voice and data services including Internet access, high-speed transport, local and long distance phone service, application services, and wireless products. Founded in 1992 and headquartered in Washington, D.C., ASCENT's mission is to open all communications markets to full and fair competition and to help member companies' design and implement successful business plans. ASCENT strives to assure that all service providers, particularly entrepreneurial firms, have the opportunity to compete in the communications arena and have access to critical business resources.

meet technical standards if the failure to meet such standards can be demonstrated to have been the responsibility of the underlying carrier. This is particularly important for competitive local carriers who depend, in some instances exclusively, on a recalcitrant incumbent service provider's wholesale services, as do many of ASCENT's members. Implementation of the TRA's proposed service quality rules should accord companies due process to demonstrate where substandard service quality falls squarely on the underlying facilities-based carrier.

At the same time, the proposed rules should give competitive companies greater discretion in the functions or services they provide to consumers. Those aspects of the TRA's proposed rules governing toll-free services areas, deposit, and deferred payment plans should ultimately be subject to market pressure rather than regulatory mandate.

I. INTRODUCTION

Service quality regulation should be considered before a backdrop of an evolving competitive marketplace. As telecommunications competition in Tennessee emerges, the need for strict regulatory control should decrease. Whether a competitive entrant is able to maintain profitability, let alone survive, is in direct correlation to the type and quality of its services, pricing, customer support, and, ultimately, in its ability to attract and retain subscribers. Consumers are increasingly able to "vote with their feet" as the number of competitive entities expands. While the TRA appropriately must focus on protection of the public, its regulatory framework should remain consistent with its pro-competitive policies. This is no less true of the TRA's service quality rules and their applicability to competitive carriers, particularly those who rely on incumbent and other carriers' networks to serve their customers, or the ability of competitors to meet customer demand.

The TRA's proposed service quality rules take an important step toward promoting high service quality for Tennessee telecommunications consumers in a more competitive market. Yet, in an evolving local market where many, if not all, competitors depend on incumbent local exchange carriers, responsibility for compliance must be shared with those entities which will ultimately control whether service quality standards are maintained. ASCENT certainly supports the *substance* of the proposed rules.

ASCENT urges the TRA to temper the *application* of the proposed rules to ensure they accord proper due process to competitive carriers who must rely on an underlying carrier's network for part or all of their business operations. As to provisions of the TRA's proposed rules governing toll free service areas, deposits, and payment options, to the extent that consumers now have alternative service options, competitive providers should be allowed to determine how best to serve prospective and current subscribers.

II. UNDERLYING CARRIERS MUST ASSUME RESPONSIBILITY FOR SUBSTANDARD SERVICE RESULTING FROM THEIR FAILURE TO MEET SERVICE QUALITY REQUIREMENTS

The Commission has proposed several network-based quality of service standards in section 1220-4-2-.03, *Records and Reports*, section 1220-4-2-.09, *Directories (White Pages)*, section 1220-4-2-.04, *Customer Refunds for Service Outages*, and section 1220-4-2-.13, *Accuracy Requirements*, of its proposed regulations. Among these are provisions requiring accuracy of meters and recording equipment used to bill customers,[2] summaries of wireline activities within the state,[3] requiring reports of telephone number utilization data,[4] annual publication of telephone directories,[5] and requiring customer refunds for disruption of local

[2] §1220-4-2-.13
[3] §1220-4-2-.03(6)
[4] §1220-4-2-.03(7)
[5] §1220-4-2-.09(1)

service.[6] These proposedrules are intended to establish minimum technical and service standards for service providers. Yet, not all service providers maintain unilateral control over compliance with such standards.

ASCENT generally supports the TRA's proposed quality of service standards, insofar as they ensure that carriers are held responsible for network problems that affect service quality to both wholesale and retail customers. Those entities having direct control over the network functions governed by the proposed standards must, however, ultimately assume responsibility for instances of non-compliance that can be directly attributed to that carrier's network failures.

In the case of the incumbent as an underlying carrier, imposing the full weight of penalties on competitors opens the door to anticompetitive mischief. The underlying carrier may leverage its network control against a competitor through its failure to comply with certain standards, knowing competitors will be forced to pay the fines which could have a significant effect on their business operations.

Service providers who rely on an underlying carrier for part or all of their network operations may be unable to comply with certain TRA service quality standards or parts thereof, simply because they do not own, control, or otherwise manage facilities or networks. Strict enforcement of proposed standards such as wireline and telephone number utilization reports, directory publishing requirements, and customer refund provisions would place non-facilities based providers in a proverbial *Catch 22*.

For example, a Tennessee service provider serving 500 customers in the Nashville area whose underlying carrier experiences a one-day network outage could be liable to each of those 500 customers for $5 *per diem* payments for that day. Thus, each of the 500 customers

[6] §1220-4-2-.04

would receive $5 from the provider, for a total payout from the provider of $2,500. Such an obligation would be grossly inequitable if the service failure were the direct result of the provider's underlying carrier, who technically would be subject to no such penalty, under a plain reading of the rule. Further, although in theory the service provider should be able to recoup the penalty amount from the underlying carrier who was at fault for the incident, seeking indemnification could be costly, protracted, and would add to the costs and burdens of an innocent service provider. Faced with such prospects, many service providers may seek to enter markets other than Tennessee, ultimately depriving Tennessee consumers of the benefits of a competitive local exchange market.

The TRA's proposed regulations requiring meters and other recording devices used in preparing monthly bills render accurate readings raises further concerns for many of the same reasons. Presumably, if a customer's bill is inaccurate due to the failure of such equipment, not only would the service provider rightly be obligated to return any overpayments to the customer, but the service provider may be liable to either the customer or the TRA for other penalties for noncompliance with this provision. Yet, if the service provider does not actually own or control meters or other recording equipment, but relies on the underlying carrier to make such measurements, the service provider would again be penalized for rendering inaccurate bills when the provider not only had no way to ensure the accuracy of the equipment, but only limited means to ensure the accuracy of the bills, if based on equipment readouts that the service provider must accept. Again, punishing a service provider in this instance for failure to comply with regulations governing equipment which it does not own or control would be inequitable provided the service provider demonstrates its inability to comply with this provision. Service providers who do not own facilities will practically be incapable of ensuring

"meters and/or recording devices used...to prepare customer's bills" are "in proper working order and ...render accurate readings."[7]

If service providers demonstrate that noncompliance with a given standard was due to network difficulties beyond the provider's control, the provider should not be inequitably held responsible for compliance. Rather, the underlying carrier should be held responsible for failure to meet the standard, as it would with respect to its retail customers. Otherwise, those service providers are in the untenable position of being faced with non-compliance penalties for failures caused by an underlying carrier, and limited recourse to seek indemnification from the underlying carrier, possibly through a protracted, and costly, process. If the incumbent is at fault, a smaller competitor might not withstand pursuit of indemnification, let alone payment of substantial penalties over an extended period for non-compliance through no fault of its own. An innocent provider who is at the mercy of an underlying carrier should not be penalized for the underlying carrier's non-performance nor expected to expend resources to collect penalties from reluctant underlying carriers if penalized.

III. COMPANY WEB SITE ACCESS SHOULD BE REQUIRED ONLY BY COMPANIES WHO MAINTAIN WEB SITES

Proposed rule 1220-4-2-.03(4)(b) would require all telecommunications service providers to maintain a complete and current copy of the company's tariff on a web site accessible to the public. Although a seemingly reasonable obligation on its face, particularly in light of the recent Federal Communications Commission's detariffing rules which requires carriers *that maintain web sites* to post rates,[8] the TRA's rule, as proposed, would obligate

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[7] §1220-4-2-.13

[8] *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd. 20730, as amended, Order on Reconsideration, 12 FCC Rcd. 15034; Second Order on Reconsideration, 14 FCC Rcd. 6015. 47 C.F.R. §42.10(b). "In addition, a nondominant IXC *that maintains an Internet website* shall make such make such rate and service information specified in paragraph (a) of this section available on-line at its Internet website in a timely and easily accessible manner, and shall update this information regularly [emphasis supplied]."

service providers to create a website or develop and upload additional information to an existing web site at additional effort and cost that is not insignificant.

The explosive increase in Internet usage, diving costs of web site development and hosting, and the ability to make large volumes easily accessible, make the Internet an ideal medium for consumers to gain access to company information. An ability for the public to gain access to information at any time and without the need for initial human intervention makes the Internet an ideal method for companies to keep their customers and prospective customers informed of services, pricing, and general company information. Nevertheless, despite the proliferation of the Internet, just as not all members of the public yet have Internet access, the TRA, through its rules, should not presume that all service providers necessarily have web sites.

As a practical matter, ASCENT agrees with the TRA that web access is an ideal method for consumers to obtain information about a carrier's services. The Association's concern has to do with the mandatory obligation to make tariffs available via the Internet, particularly in the absence of any evidence that all companies have established an Internet site of which such information could be posted. Also of concern is the lack of any evidence that companies, particularly those without web sites, could comply with mandatory web site posting obligations at a reasonable cost and in a manner that would allow companies to timely comply with the TRA's tariff rules, when *immediate* compliance is presumed by the language. To the extent that company and pricing information can be provided to the public via more conventional methods, Internet access should not be made mandatory.

Clearly, the absence of a web site may be a competitive disadvantage for companies. But the decision to produce a web site and what to post on an existing web site should be left to the entity, and not be mandated by regulation. As long as consumers retain an

ability to contact the contact via toll free number or otherwise, consumers will not be disadvantaged if companies are not required to post rate information online. Section 1220-4-2-.03(4)(b) should be amended to allow for optional web site access if a web site is maintained by the company as follows: "(b) Telecommunications service providers shall make available a copy of its tariffs available for public inspection. Public inspection shall also include, but not limited to, having a copy of the tariffs available on the Internet for those companies maintaining a website."

IV. THE TRA SHOULD ACCORD COMPETITIVE PROVIDERS DISCRETION TO ESTABLISH POLICIES REGARDING DEFERRED PAYMENT PLANS, CUSTOMER DEPOSITS, AND TOLL-FREE CALLING AREAS, TO MEET CONSUMER DEMAND

The TRA's quality of service regulations generally establish an effective framework for ensuring that end users receive high quality service. In their application, however, aspects of the proposed billing, customer deposit, and toll-free calling area provisions will come at a significant cost to providers, while providing negligible countervailing public benefit. The TRA should consider amending these proposed provisions to allow competitive service providers greater discretion to set company-specific policies as to how to best meet consumer demand.

A. Deferred Payment Plans Should be Required For Basic Local Services Only So Carriers Are Not Forced to Provide Loans for Non-Essential Services

The TRA has proposed in section 1220-4-2-.14(1) that *all* telecommunications service providers[9] be required to provide deferred payment plans to consumers upon request. Deferred payment plans must allow customers to make monthly installment payments for a maximum of six months, *with no interest*. Further, section 1220-4-2-.14(2) would require all providers to allow customers to make payments by a variety of methods, including credit cards.

[9] Telephone Service Provider is defined in the proposed rules as "any provider of local exchange service...[including] but not limited to incumbent local exchange carriers, competitive local exchange carriers, and resellers.

No charge may be assessed for credit card payments. These provisions stand to significantly increase provider and end user costs for the benefit of a very limited group of subscribers.

ASCENT recognizes and understands the TRA's concern that consumers be able to retain access to basic dial tone services at all time. It was this concern that presumably spurred proposal of the deferred payment requirement. ASCENT respectfully asserts, however, that the provision, as proposed, may exceed the scope of the problem which the TRA intended to address. On its face, the deferred payment requirement appears to mandate that all carriers provide what would border on an interest-free loans to their customers for virtually any reason, upon request. Thus interpreted, the requirement goes beyond simply protecting consumer dial tone access for certain subscribers, with negligible countervailing public benefit, particularly for competitive services.

The local market in Tennessee is now sufficiently competitive to allow the market to dictate whether service providers offer deferred payment plans for services other than basic dial tone. Providers should be accorded the flexibility to determine whether to extend deferred payment options to customers for discretionary services other than basic local services. Alternatively, if delayed payment plans are required, carriers should be allowed to charge reasonable interest, akin to that charged by a bank or credit institution, for the extension of such consideration, consistent with current late payment provisions for discretionary and competitive services. Section 1220-4-2-.14(1) should be amended to limit both the type of service on which deferred payment may be made *and* the length of time that such deferment may apply, as follows:

> (1) Telecommunications service providers ~~shall~~ may provide, upon request, a deferred payment plan for the payment of charges incurred for basic local phone services that will allow a customer to make payment by installments when such customer is unable to pay the amount due for

service. The deferred payment plan may require the customer to maintain his/her account current and make equal payments that will payoff the outstanding balance within an agreed period time that should not exceed three (3) ~~six (6)~~ months, unless circumstances warrant additional time.

Finally, whether carriers accept credit cards should also be left to carrier discretion. Most credit card companies charge businesses a service fee for each transaction accepted on credit, making acceptance of smaller transactions via a Visa or MasterCard a costly proposition, which none but the largest of businesses can afford to undertake. Tennessee providers should not be forced to assume the costs associated with making credit card payment options available or be forced to pass such costs on to all subscribers. The TRA should amend section 1220-4-2-.14(2) to either leave the acceptance of credit cards to the discretion of the individual carrier, or to allow carriers to pass through the amount of service fees paid on a credit card transaction to the customer.

B. Toll Free Calling Areas Should be Determined by the Competitive Marketplace Rather than Mandated by the TRA

Under section 1220-4-2-.21, all telecommunications service providers must provide toll-free calling services for any intracounty call. As competition continues to develop in Tennessee, whether or not a service provider provides intracounty toll free calling should become a competitive market issue. If toll-free country wide calling is an important issue to Tennessee consumers, those providers who offer such calling plans will be better situated to attract and retain customers, particularly those with large volumes of local calls.

If intracounty toll free calling is mandated, requiring service providers to provide toll-free county wide calling to some customers will increase the cost of all other local and toll services to *all* of the providers' customers, who will effectively subsidize those end users having high intracounty call volumes. Service providers should be allowed to target reduced-price

calling plans to those consumers who will derive the most benefit from the individual plan. Such targeted discounts allow all consumers to benefit, without burdening consumers at large with the higher telephone costs attributable to a select consumer group. The provision of toll-free calling areas should not be decided by regulatory fiat, but should be left to the discretion of the competitive marketplace and service provider capabilities.

C. Interest Rates for Customer Deposits Should Be Tied To A Current Percentage Rate as Determined Annually by the TRA

Under Section 1220-4-2-.05, *Customer Deposits,* the TRA has mandated that all customer deposits "shall accrue at a simple interest rate of 6% annually."[10] While payment of simple interest on any customer deposits is reasonable, such interest should be tied to fluctuating interest levels, and established annually. At present, the interest rates on money market accounts average 4.5%, and interest rates on certificates of deposit are only slightly higher, averaging around 6.5%.[11] Conversely, it is possible that interest rate yields on savings accounts could rise higher than 6%. Rather than mandating simple interest of 6% annually on customer deposits, the TRA should consider tying the percentage rate to be paid by carriers to the percentage rate the carrier is likely to average as a result of depositing the money in a money market account or short-term certificate of deposit, and set interest rates annually, accordingly.[12]

V. CONCLUSION

ASCENT supports the TRA's desire to protect Tennessee consumers and ensure that they are able to access the highest-quality telecommunications services possible. The TRA's rules should be equitable in their implementation by holding carriers who ultimately affect

[10] §1220-4-2-.05(3)

[11] Source: Bankrate.com, national average rates for November 6, 2000

[12] The Maine Commission, for example, follows such a curriculum, setting interest rates for both late payment charges and customer deposits annually, and tying the rates to the prime rate as reported in the Wall Street Journal. For example, in its November 3, 2000 *Notice*, the Commission announced the rate for customer deposits effective January 1, 2001 will be 5.4%, based on the Wall Street Journal reported rate for one-year certificates of deposit on November 2, 2000, rounded to the nearest .10%.

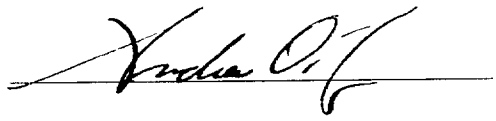
service quality responsible for compliance with the TRA's technical network service quality standards.

The proposed rules should be further amended to remain consistent with federal obligations with respect to Internet access, making Internet disclosure obligations contingent upon whether companies currently have established Web sites and allow market forces to dictate whether competitive providers offer the TRA's proposed deferred payment and toll free calling area obligations.

By incorporating the foregoing considerations into its proposed rules, the TRA will be able to create an appropriate, flexible balance to service quality that will effectively protect the public in an emerging competitive marketplace.

Respectfully submitted,

Association of Communications Enterprises

By: 

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