

Notice of Rulemaking Hearing
Tennessee Regulatory Authority

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 11 a.m. (central) on the 8th day of November, 2004.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 138.

For a copy of this notice, contact: Sharla Dillon, Docket Manager, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37343, (615) 741-2904, extension 136.

Substance of Proposed Rule Amendment

Chapter 1220-4-10

Rules for Collecting Contributions from Telecommunications Providers and Distributing Assistive Telecommunications Equipment to the Qualified Individuals with Disabilities

Tennessee Regulatory Authority Rule 1220-4-10, as amended, shall read:

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1220-4-10-.01 Definitions

- (1) "Act" refers to Tenn. Code Ann. § 65-21-115.
- (2) "Applicant" means a person who applies to the Tennessee Regulatory Authority for a device to assist with communication through the telephone network.

- (3) “Assistive Communications Device” means special equipment that permits individuals who have a disability to communicate effectively over the telephone network.
- (4) “Authority” means the Tennessee Regulatory Authority.
- (5) “Lifeline” means a telephone assistance program that reduces the monthly telephone charges for qualified persons.
- (6) “Link-up” means a telephone assistance program that reduces the non-recurring cost of installing telephone service for qualified persons.
- (7) “Provider” means a telecommunications service provider or a competing telecommunications provider as defined by Tenn. Code Ann. § 65-4-101 whose annual intra-state gross receipts are greater than five million dollars (\$5,000,000).
- (8) “Recipient” means the person whose application for an assistive communications device has been granted by the Authority.
- (9) “TDAP” refers to the Telecommunications Devices Access Program administered by the Tennessee Regulatory Authority.
- (10) “TDAP Coordinator” refers to the individual employed by the Authority to manage the TDAP Program.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000. Amendment filed February 24, 2000; effective May 9, 2000.

1220-4-10-.02 Contributions of Providers

- (1) All Telecommunications Service Providers and all Competing Telecommunications Service Providers (the Providers), as defined by Tenn. Code Ann. § 65-4-101 subsections (c) and (e), whose Tennessee intra-state gross receipts for the calendar years is more than five million dollars (\$5,000,000) shall make contributions to the Telecommunications Devices Access Program (“TDAP”) established by Chapter 417 of the Public Acts of 1999 (the “Act”). Each Provider shall make such contributions in proportion to its share of the total intra-state gross receipts of all appropriate Providers for the most recent calendar year.
- (2) Monies collected for the TDAP will fund the purchase of assistive communication devices for Tennesseans with disabilities, and other equipment that may be necessary to implement the Act, and in addition, cover the necessary administrative costs, to include outreach activities, of the Authority to administer the Program.
- (3) For the purposes of this Rule Chapter, the intra-state gross receipts of the Providers shall be those reported on Form UD 16 "Statement of Gross Earnings and Computation of Inspection Fee" filed with the Authority on or before April 1 of each year.
- (4) On or before May 1 of each year, the Authority shall calculate a contribution factor to apply to the intra-state gross receipts of each Provider to generate total contributions of no more than seven hundred and fifty thousand dollars (\$750,000) per year from all Providers including minimum contributions.
- (5) The Authority shall create a reserve fund for the Program that will not exceed one million dollars (\$1,000,000) within any given year.

- (6) Pursuant to the provisions of the Act, the Providers are prohibited from line itemizing on its end-users telephone bills any prorata contribution of the provider's contributions to the TDAP.
- (7) Contributions by Providers to the TDAP are not recoverable from the Authority's Universal Service Fund.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000. Amendment filed February 24, 2000; effective May 9, 2000.

1220-4-10-.03 Collection of Contributions

- (1) Forms designed by the Authority for the remittance of contributions to the Program shall be mailed to each Provider by May 15 of each year. Each Provider shall submit its contribution to the Authority by June 15 of each year.
- (2) Providers failing to submit contributions, or submitting late, may be subject to penalties under Tenn. Code Ann. §§65-3-119, 65-4-116, and 65-4-120.
- (3) Contributions when collected shall be deposited in the state treasury in the special fund created for the TDAP Program.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000. Amendment filed February 24, 2000; effective May 9, 2000.

1220-4-10-.04 Minimum Eligibility Requirements

- (1) All applicants must be residents of The State of Tennessee.
- (2) Applicants shall have a disability, as verified by a care giver licensed to practice in the state of Tennessee, such that the person cannot use the telephone effectively without the use of an assistive communication device.
- (3) Only one assistive communication device per household will be awarded through the TDAP unless there are persons in the same household with different adaptive needs. The Program Coordinator may then determine the need for more than one assistive communication device.
- (4) Because the demand for assistive communication devices may exceed the supply, the Authority will award the assistive communication devices on a first come basis. Priority, however, will be given to those applicants with the greatest physical and financial and/or social need. Such factors as described below shall be used to evaluate an applicant's physical, financial and social need for the assistive communication devices:
 - (a) The receiving of federal or state public assistance (i.e., Temporary Assistance to Needy Families (TANF), Medicaid, Food Stamps, Supplemental Security Income (SSI), Federal Housing/Section 8 or Low Income Heating, etc.);
 - (b) Applicants whose total gross family income is less than 125 percent of the Federal Poverty Guidelines;
 - (c) The presence of any serious physical, medical, and/or cognitive condition, as verified by a care giver licensed to practice in Tennessee, that may present a life

- threatening situation (i.e., heart condition, stroke, severe depression, epilepsy, etc.);
- (d) An eligible applicant living alone;
 - (e) Applicants who are under the age of 18 years who are able to use assistive communication devices for at least emergency purposes and who are frequently left in charge of the household or alone;
 - (f) A living situation where there is more than one person requiring an assistive communication device;
 - (g) Other unique circumstances deserving of special consideration that do not meet the above factors; and
 - (h) Applicants who meet the federal and/or state qualifications for the Lifeline and Link-up Telephone Assistance Programs.
- (5) The Authority may request all necessary documentation needed to confirm information provided by applicants. This information could include but not be limited to doctor statements, copies of the applicant's federal income tax returns, evidence of public assistance eligibility and any other information needed to ensure the applicant meets the requirements as specified in the Act and this Rule Chapter.
 - (6) Applicants must confirm in their application their ability to utilize an assistive communication device effectively. For those applicants that are not qualified in the use of such equipment, the TDAP Program Coordinator will provide applicants with information about qualified training.
 - (7) The Authority shall furnish application forms to be completed by the applicant or his/her authorized representative.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000.

1220-4-10-.05 Purchase and Distribution of Assistive Devices

- (1) The Authority will purchase assistive communication devices under a state contract.
- (2) The TDAP Coordinator shall evaluate applications for assistive communication devices and shall award such equipment only to those applicants who meet the requisite requirements listed in this Rule Chapter. Applicants who fail to qualify shall be notified by U.S. Registered Mail of the reasons for denial. The notification shall also describe the appeal process of the decision.
- (3) Assistive communication devices awarded to qualified applicants are available for their exclusive use as long as they meet the Minimum Eligibility Requirements listed in 1220-4-10-.04.
- (4) The recipient must return the assistive communication devices if any of the following conditions occur:
 - (a) The recipient moves from the state;
 - (b) The recipient loses telephone service permanently;

- (c) The recipient abuses the assistive communication device;
 - (d) The recipient is found to be using the device for illegal purposes;
 - (e) The recipient no longer requires the device.
- (5) Equipment may be exchanged if a different device becomes necessary because of a change in access needs.
 - (6) Stolen or damaged equipment may be replaced. The applicant must provide copies of the appropriate documentation, such as fire department and/or police department reports.
 - (7) All contested issues arising from the application of these rules will be determined under Tenn. Code Ann. § 4-5-301 and § 65-2-101 et seq.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000.

1220-4-10-.06 Maintenance and Repair

- (1) If the assistive communication device is in need of repair, the recipient shall notify the Authority to determine if loaner equipment is available and whether he/she qualifies for the equipment.
 - (a) Recipients will not qualify for a loaner device if it is determined that the original device was damaged as the result of negligence or abuse.
 - (b) In order to qualify for loaner equipment, Recipients shall provide evidence that they will pay for the repair cost of their assistive communication device or contact the TDAP Coordinator to apply for repair assistance.
- (2) The Authority shall maintain a list of locations where assistive communication devices can be repaired. The Authority shall make the final determination as to where the assistive communication devices are repaired.
- (3) It is the responsibility of the recipient to return the assistive communication devices to the repair center, as designated by the Authority, for repair. The cost of the repair, and/or coordination with the TDAP Coordinator, shall be the responsibility of the recipient special consideration will be given for repair cost by the Authority for recipients who have special financial needs as listed in 1220-4-10-.04 (4a-h).
- (4) It is the responsibility of the recipient to purchase miscellaneous items, such as paper rolls, for the operation of the assistive communication devices.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000.

1220-4-10-.07 Monthly Telephone Charges

- (1) The recipient is responsible for all charges for local and long distance telephone service and any other service charges from the telephone company.

Authority: T.C.A. §§65-2-102 and 65-21-115. Administrative History: Original rule filed November 22, 1999; effective February 5, 2000.

1220-4-10- 08 Confidentiality of Information and Nondiscriminatory Statement

- (1) All information obtained by the Authority from applicants shall be kept confidential and will not be released to any person or entity without the expressed approval of the applicant unless for the purposes of reports or audits are required under state law.
- (2) Services for the TDAP are provided on a nondiscriminatory basis in compliance with Title VI of the Civil Rights Act of 1964, as amended, Section 602 of the Individuals with Disabilities Education Act of 1997, Title II of the Americans with Disabilities Act of 1990 and Title V of the Vocational Rehabilitation Act of 1973 and its amendments.

Authority T C A §§65-2-102 and 65-21-115 Administrative History Original rule filed November 22, 1999, effective February 5, 2000

Legal/Technical Contact: J. Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37343
(615) 741-2904, extension 170

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Regulatory Authority.

PAT MILLER
Pat Miller, Chairman

Subscribed and sworn to before me this the 3 day of September, 2004.

Lynda Lu Prewitt
Notary Public

My commission expires on the 28th day of May 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the 31 day of Aug., 2004.

Riley C. Darnell
Riley C. Darnell
Secretary of State

By: Michael

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