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VIA HAND DELIVERY

Hon. Eddie Roberson, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Rulemaking for the Purpose of Addressing the Provisions of Public  
Chapter 545 Regarding Tariffs of Incumbent Local Exchange  
Telephone Companies*  
Docket No. 04-00284

Dear Chairman Roberson:

Enclosed are the original and four copies of the *Comments of AT&T Relating  
to October 19 Draft Rules*.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized loop that starts under the word "yours" and ends under the name "Guy M. Hicks".

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re: *Rulemaking for the Purpose of Addressing the Provisions of Public Chapter 545 Regarding Tariffs of Incumbent Local Exchange Telephone Companies*

Docket No. 04-00284

**COMMENTS OF AT&T RELATING TO OCTOBER 19 DRAFT OF RULES**

AT&T Tennessee ("AT&T") files the following comments with respect to the draft TRA Proposed Rules. AT&T appreciates the opportunity to provide these additional comments to address the updated draft of rules published on October 19, 2007. Having reviewed the changes, AT&T supports the Authority's decision with respect to many of the Rules to simply cite to the appropriate statute rather than selectively quoting statutory language in the form of a rule. AT&T recognizes that the General Assembly's passage of deregulatory statutes has superseded many prior TRA Rules, and the TRA is acting properly in deleting those rules that are no longer consistent with Tennessee law. AT&T does not believe it is necessary for the TRA to adopt, in rule format, language restating the various new statutory provisions. However, to the extent that the Authority promulgates new rules based on these statutes, AT&T makes the general comment that the TRA's rules must not alter the statutory language.

Many of the changes contained in the October 19, 2007, draft are changes that are consistent with the comments above. Specifically, AT&T supports the

TRA's decision to revise new Rule 1220-4-2-60 and 61, in which the TRA's most recent draft deletes text contained in the earlier draft rule and replaces that text with a reference to the applicable statute. AT&T believes that this is a better format and will avoid any potential confusion or disputes resulting from grammatical differences between the TRA's rules and the statute.

AT&T believes that this type of revision would also be appropriate with respect to new rule 1220-4-2-59. With respect to this rule, the TRA rule, unlike the statute, contains lettered subsections, which separate certain text from the sentence in which it appears in the statute. By making this formatting change, the rule could cause confusion with respect to some promotions.

AT&T has had recent conversations with Staff suggesting that this reformatting of the statutory language could be construed to limit the length of certain promotions in a manner inconsistent with the statute. While the statute is clear that only promotions offering "free service" are subject to a 6-month durational limit, the rule could be read to limit all promotions to 6 months. Such a limitation would be inconsistent with both the new statute and the TRA's precedent. Perhaps most importantly, limiting all promotions to 6 months in length would deny customers the opportunity to enjoy savings in stark contrast to the intent of the General Assembly.

Specifically, Section 65-37-101 has been published in the Tennessee Code Annotated as follows:

**65-37-101. Promotional incentives for telecommunications services - Policy - Implementation.** - (a) It is the policy of the

general assembly to encourage and not prohibit or delay attractive discount pricing and special promotional offers for telecommunications services.

(b) To implement the policy articulated in this section and to encourage low prices, notwithstanding any other provisions of law, all telecommunications providers shall be permitted to offer promotional incentives for telecommunications services, including rebates and limited free service offerings, with such promotions not extending more than six (6) months. Any such free service promotions shall not provide more than one (1) month of free local exchange service in any twelve-month period. Any such free service promotion available for the full six-month period may not be reinstituted for thirty (30) days after expiration of such period. [Acts 2005, ch. 27. § 2.]

In contrast however, the TRA's proposed rule is printed as follows:

#### 1220-4-2-59 Promotional Incentives

(1) All telecommunications providers shall be permitted to offer promotional incentives for telecommunications services including rebates and limited free service offerings, provided that

(a) Such promotions not extend more than six (6) months

(b) Any such free service promotions shall not provide more than one (1) month of free local exchange service in any twelve (12) month period

(c) Any such free service promotion available for the full six (6) month period may not be reinstituted for thirty (3) days after expiration of such period.

Authority Tenn Code Ann §65-37-101

By separating out the language into lettered subsections, the TRA proposed rule could create confusion with respect to the phrase "such promotions not extend

more than six (6) months". In the statute, it is grammatically clear that the phrase "with such promotions not extending more than six (6) months" modifies the phrase immediately preceding it within the same sentence. That phrase is "limited free service offerings". Because the phrase "with such promotions not extending more than six (6) months" is part of the same sentence, it is clear from the format of the statute that the six month limitation is applicable *only* to free service offerings, rather than to all promotions. By contrast however, the formatting of the language in the TRA's proposed rules creates an ambiguity about which promotions are subject to the six month limitation.

It is clear from both the grammatical construction of the statute and from the preceding subsection of the statute that the general assembly did not intend to limit all promotions to six months. In fact, the statute is clear that "it is the policy of the general assembly to encourage and not prohibit or delay attractive discount pricing in special promotional offers for telecommunications services". It would be inconsistent with both the grammatical structure of the statute and with this policy statement for the TRA to adopt a rule which could be read to limit all promotions to six months rather than limiting only free service offerings to six months.

Finally, the rule, to the extent it might be construed to limit all promotions to six months rather than limiting only free service promotions to six months, would be inconsistent with the precedent of the TRA. The TRA has on many occasions

since the passage of TCA 65-37-101 approved promotions<sup>1</sup> which extended beyond six months when those promotions did not constitute free service offerings. This was proper and consistent with the language of the statute.

For the reasons set forth above, AT&T proposes that the TRA either delete new rule 1220-4-2-59, revise the rule to track exactly the language in the statute without reformatting into subsections, or replace the rule with the following statement: Promotional incentives shall be permitted in accordance with 65-37-101 and other applicable statutes.

Finally, AT&T understands that none of these newly promulgated rules should be construed to impose upon CLECs or IXC's filing requirements in addition to, or more strenuous than, the filing requirements imposed upon incumbent local exchange carriers, and AT&T does not read the rules to impose any such additional obligations on CLECs or IXC's.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.  
d/b/a AT&T TENNESSEE

By: 

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<sup>1</sup> For example, the following promotions have been approved by the TRA in just the last year alone: Alliance Gift Card Promotion, BellSouth Line Connection Waiver Program, BellSouth Select Additional Line Redemption, BellSouth Centrex Extension, BellSouth SFD Card Offer Extension, MDU Closer Promo, LBS PRI Advantage Promotion, Res Svc Connection Charge Waiver, SBS PRI Complete Promotion, T Order Closer, Welcoming Rewards, BellSouth Line Connection Waiver.

## CERTIFICATE OF SERVICE

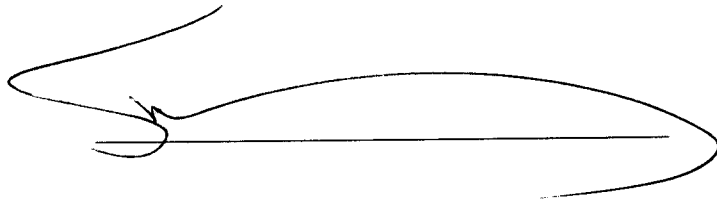
I hereby certify that on October 29, 2007, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
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- ☐ Overnight
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Charles B. Welch, Esquire  
Farris, Mathews, et al.  
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A handwritten signature in black ink, appearing to read 'Charles B. Welch', with a long horizontal flourish extending to the right.