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VIA HAND DELIVERY

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Hon. Sara Kyle, Chairman  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37238

Re: *Rulemaking to Establish Requirements and Funding mechanism to  
Support Telecommunications Services for Individuals with Hearing  
Loss and Speech Disabilities*  
Docket No. 05-00237

Dear Chairman Kyle:

Enclosed are the original and four copies of BellSouth's *Comments* in the referenced matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line. The signature is stylized with a large, sweeping loop at the end.

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
Nashville, Tennessee

In Re:       *Rulemaking to Establish Requirements and Funding Mechanism to Support Telecommunications Services for Individuals with Hearing Loss and Speech Disabilities*

Docket No. 05-00237

**COMMENTS OF BELL SOUTH TELECOMMUNICATIONS, INC.**

Following are the comments of BellSouth Telecommunications, Inc. ("BellSouth") to the Staff's proposed Rule Governing the Operations and Funding Mechanism for the Tennessee Relay Service, Chapter 1220-4-14 ("the Proposed Rule").

**I. Introduction**

The purpose of the Proposed Rule is to establish a more competitively-neutral funding mechanism for the Tennessee Relay Service ("TRS"). Section 1220-4-14-.02 properly states that "the funding mechanism for TRS shall be competitively neutral-based in accordance with Authority rules and federal statutes." During the Technical Workshop, *all* participating parties agreed that all intrastate communications service providers in Tennessee should pay their fair share to support TRS.<sup>1</sup>

The current funding mechanism is not competitively neutral. According to the Authority Staff, only 32 communications service providers now contribute to the costs of TRS. These providers include BellSouth, other ILECs, the Co-ops,

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<sup>1</sup> See Transcript of Technical Workshop of October 6, 2005 ("Transcript") at p. 38. Cingular and most other CMRS providers did not participate in the Workshop.

Sprint (now Embarq), and the AT&T and MCI (now Verizon) IXC's. Many competitors of these companies provide intra-state communications services in Tennessee but do not contribute to TRS.<sup>2</sup>

BellSouth supports the Staff's efforts to devise a competitively-neutral rule that will allow for more communications service providers to provide financial support to TRS in order that Tennesseans with communication disabilities will have ready access to more communications services.

## **II. Funding Mechanism**

The Proposed Rule relies on assigned, working telephone numbers to allocate the costs of funding TRS. In BellSouth's view, there are problems and unanswered questions with respect to this proposed funding mechanism.

First, IXC's, resellers and certain VOIP-based intra-state long distance providers do not have assigned numbers. It is unclear from the Proposed Rule how these providers would determine the amount of their assessments or how the Authority could determine if such providers were paying their fair share.

Section 1220-4-14-.05(1) of the Proposed Rule states that all intrastate communications service providers shall contribute toward the cost of supporting TRS through an annual assessment. Section 1220-4-14-.05(2) provides that such assessment shall be based upon the prorated share of total working telephone numbers. "Working telephone number" is defined as "a telephone number with an

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<sup>2</sup> Total costs for the Tennessee Relay Center are estimated to be less than \$3,000,000 annually. According to the Staff, this amount is likely to decline as more Tennesseans with communications disabilities use internet-based relay services, video or email for their communication needs. See Transcript, at pp. 8, 12, 62.

existing NPA-NXX code that is assigned to a working subscriber access line *or its equivalent* through which real-time voice communications are originated and terminated.”<sup>3</sup>

BellSouth assumes that the term “or its equivalent” refers to access facilities that provide the equivalent functionality to a subscriber access line, such as a PRI ISDN line, PBX trunk, etc. If this assumption is incorrect, then clarification of the term should be provided. In any event, the proposed use of working telephone numbers does not specifically address numbers used by, but not assigned to, resellers and UNE providers. Numbers used by customers of these carriers are assigned to the underlying carrier that actually provides the service. The Rules should clarify that, if working numbers are used, then the underlying carrier may recover any TRS charge on these numbers from the reseller or UNE carrier. Those carriers, in turn, could then recover these charges from their customers.

However, a fundamental problem with the use of working telephone numbers is that telephone numbers are not assigned to intrastate communications service providers such as IXC. Therefore, under the Proposed Rule, there is no provision for assessing any charge to these providers, and they would not contribute to the TRS costs allocated to the intrastate jurisdiction.

Moreover, the funding mechanism for the Proposed Rule will create an unnecessary administrative burden. The reporting requirements for telephone numbers under the Proposed Rule cannot be met with existing reports now filed

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<sup>3</sup> See 1220-4-1-4.01(12) (emphasis added.)

with NANPA. The fundamental goal of the current Numbering Resource Utilization/ Forecast (NRUF) Reports that are currently required of service providers is to monitor and assess current telephone number utilization and future use – not to determine funding requirements. That is why, for example, a ported out telephone number is still reported by the service provider that was originally assigned the NXX and not by the service provider actually providing service to the customer with the ported TN. For NRUF purposes, it is only important that the ported out number is counted for determining NXX utilization.

Moreover, extensive and costly report development would be required if this funding mechanism is adopted. For example, carriers with legacy ordering and billing systems would need to

- identify the numerous ordering and billing systems that will need to be changed due to new requirements;
- identify the requirements for the changes and establish written system requirements;
- submit work requests to outside vendors and receive feasibility estimates for the work;
- coordinate changes with other planned ordering and billing system changes and software releases;
- implement and test the code and test systems prior to going live to eliminate bugs.

As the Authority is aware, the FCC is currently reviewing a Universal Service Fund (“USF”) allocations mechanism that will be based on telephone numbers. The TRA should therefore avoid any telephone-number based allocation mechanism in these proposed Rules until the FCC completes its work. Otherwise, the TRA may impose a number reporting requirement that will be different from the FCC’s, generating additional cost and expense for telephone companies. BellSouth

recommends an allocation mechanism using gross annual receipts on intrastate revenues, as described in more detail below.

Mr. John Manning, who appeared on behalf of NeuStar and NANPA during the October 6, 2005 Technical Workshop, raised a number of issues and concerns with respect to the use of assigned working numbers as a funding mechanism. The Proposed Rule does not appear to address those concerns. For example, Mr. Manning identified issues including how to address (1) numbers that do not fall within the assigned number category, (2) carriers that fail to report their numbers, (3) numbers provided to nonproviders of service, such as resellers, and (4) ported numbers. When asked by the Staff during the Technical Workshop whether NeuStar is working on these issues, Mr. Manning replied that NeuStar has “worked on some of them.” Mr. Manning also stated that NeuStar’s efforts were “geared primarily” to number utilization issues, not cost recovery.<sup>4</sup> Mr. Manning also pointed out that he was not aware of *any state* in the country that used telephone numbers as the basis for the funding mechanism for TRS or similar programs.<sup>5</sup>

Moreover, during the Technical Workshop, it was indicated that telephone number data would be provided by a neutral third party, such as NeuStar. The Proposed Rule does not contemplate this. Instead, the Proposed Rule requires intrastate communications service providers to submit data showing the total number of assigned and working telephone numbers. As stated above, many such

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<sup>4</sup> See Transcript at pp. 28-30, 35.

<sup>5</sup> See Transcript at pp. 27-38, 44.

providers do not have telephone numbers and the Proposed Rule is silent as to how a surrogate for such numbers is to be determined.

BellSouth recommends the use of annual gross receipts on intrastate revenue as the basis for the funding mechanism. This funding mechanism is currently in use and working for providers that pay the regulatory inspection fee. Use of annual gross receipts is straight forward and addresses the problem of not capturing contributions from carriers who do not have assigned working numbers. Also, annual gross receipts on intrastate revenue are more readily reviewable by the Authority than are working numbers or yet-to-be-identified surrogates for working numbers for providers that do not have working numbers. This approach would also allocate TRS costs more equitably than a snapshot of working numbers at a point in time.

### **III. Cost Recovery**

Section 1220-4-14-.05(3) of the Proposed Rule allows companies only one option to recover their TRS assessment – by adding a new itemized line item for TRS Fund on customer bills.<sup>6</sup> BellSouth recommends that the Authority continue to allow for the recovery of assessments from intrastate access. This is an established, proven cost recovery method. A new line item on customer bills raises a number of problems.

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<sup>6</sup> The authorized charge would be calculated by the TRA and itemized on each “account.” The Proposed Rule is not clear on how “accounts” are linked to “working numbers”. In any event, the number of both accounts and working numbers are likely to change for all carriers between the time the working numbers are reported and any itemized charge is assessed. Therefore, it is possible that a carrier could over- or under-recover its assessment in any given year.

First, because of competitive market conditions, it is unlikely that BellSouth would add a new expense recovery line item to customer bills, particularly if BellSouth's competitors, including wireless, CATV and VoIP-based providers, are not paying their fair share to support TRS. Second, BellSouth will incur expenses to modify its billing system for a new line item charge. Finally, and perhaps most importantly, a number of customers have voiced concerns about existing line item charges, and adding another one is likely to generate complaints to BellSouth and the Authority.

As an alternative, BellSouth proposes that carriers be given a credit against the regulatory inspection fee they now pay to the Authority. The credit should be in an amount equal to each carrier's assessment for TRS support. This approach would help to balance the current competitive disparity where certain providers, including BellSouth, both pay a substantial inspection fee and support TRS, while other providers of intra-state service in Tennessee competing directly against BellSouth, do not contribute to either. This alternative would also eliminate the need for any new line item on customer bills.<sup>7</sup>

If the Authority chooses to adopt a new funding mechanism based on working telephone numbers, BellSouth requests that it be given the flexibility to recover its TRS assessment by means other than a new line item on its customer bills.

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<sup>7</sup> BellSouth also supports Embarq's proposal to explore the establishment of a general tax to assist Tennesseans with communications disabilities.



#### **IV. The TRA Reserve Fund**

The Proposed Rule allows the Fund Administrator to establish a TRS Reserve Fund. Any excess funds collected over the actual expense of TRS would be deposited into the Reserve Fund.<sup>8</sup> BellSouth recommends that the Proposed Rule be amended to provide a cap on the amount of the Reserve Fund. This is consistent with the cap on the Reserve Fund for the Telecommunications Device Access Program ("TDAP").<sup>9</sup> BellSouth recommends a cap not to exceed 50% of the previous year's actual operating expenses.

#### **V. Transparency**

BellSouth recommends adding a provision to the Proposed Rule requiring that the annual financial report for TRS be placed on the Authority's website for public review.<sup>10</sup> This step will add transparency to the program and make the report more accessible to Tennesseans.

#### **VI. Statutory Citations**

BellSouth recommends that the statutory references to T.C.A. § 65-21-115 in the Proposed Rule be deleted. BellSouth understands that statute to apply to TDAP, rather than to TRS.

#### **VII. Conclusion**

BellSouth supports the Staff's efforts to devise a competitively-neutral rule that will allow more Tennessee communications service providers to support TRS.

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<sup>8</sup> See 1220-4-14-.03.

<sup>9</sup> See T.C.A. § 65-21-115.

<sup>10</sup> See 12204-4-14-.03(4).

BellSouth recommends that the Authority adopt a funding mechanism based on the use of gross receipts on intrastate revenues. If the Authority chooses to pursue a funding mechanism based on working telephone numbers, BellSouth requests clarification as to how the Authority intends to assess communications service providers that do not have telephone numbers. Most important, BellSouth objects to limiting cost recovery options to adding a line item on customer bills and requests flexibility to recover its TRS assessment by alternative means.

Respectfully submitted,

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