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TN REGULATORY AUTHORITY
DOCKET ROOM

VIA HAND DELIVERY

Hon. Tre Hargett, Chairman
c/o Sharla Dillon
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 Hargett:

Enclose are the original and four copies of AT&T's comments in the above-referenced docket.

Very truly yours,


Guy M. Hicks

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

TN REGULATORY AUTHORITY
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COMMENTS OF AT&T

Following are the comments of BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee ("AT&T") to the TRA's Proposed Rule Governing the Operations and Funding Mechanism for the Tennessee Relay Service ("TRS"), Chapter 1220-4-14 ("the Proposed Rule"). AT&T's comments, which supplement those submitted by BellSouth on October 6, 2006, request four clarifications to the Proposed Rule.

I. Introduction

AT&T strongly supports the principles and objectives of the TRA's TRS program, which is designed to enable Tennesseans with hearing and/or speech disabilities to access the telephone system to communicate with others. AT&T believes that support for TRS should be broadly-based, technologically and competitively neutral, able to accommodate technological change, and should not drive customer purchasing decisions. AT&T applauds the TRA's efforts in this rule-making proceeding to broaden service provider support of the Tennessee TRS program.

AT&T believes that its recommended revisions to the Proposed Rule will facilitate broader service provider participation in TRS funding, and provide needed consistency with the federal TRS program. The proposed Rule, which was drafted

in 2006, would require VoIP providers to participate in TRS funding. Although AT&T strongly supports broader service provider participation in the Tennessee TRS program, VoIP services are interstate information services subject to federal rather than state regulation. Also, the recently enacted Competitive Cable and Video Services Act provides that no state agency may regulate the provision of retail interconnected voice over internet protocol service. (See Section 8(d) of the Act.) If the TRA decides nonetheless to require participation in state TRS funding by VoIP providers, AT&T recommends that revisions be made to Proposed Rule, particularly those described in Section 2 and 3(b), below. Among other things, these changes are designed to ensure that the cost is assessed on all interconnected VoIP providers on a competitively neutral basis; and that providers are allowed to contribute based on the inverse of the FCC's current 64.9% interstate safe harbor (i.e., 35.1% of revenue).

II. Recommended Revisions to Proposed Rule

1. Proposed Rule 1220-4-14-.01(8)

AT&T understands the intended funding mechanism in the Proposed Rule to be based on service provider receipts from retail (end user) revenue for intrastate telecommunications services. However, the Proposed Rule's definition of "Gross Receipts" is linked to revenues for services subject to the Tennessee Sale and Use Tax. Subject to the applicable sourcing rules, Tennessee sales tax applies to intrastate, interstate and international telecommunications services that originate or are received in Tennessee and that are billed or charged to service addresses in

Tennessee. (See Tenn Code Annot. 67-6-205(c)(3)). This poses a problem because the FCC has determined that the states cannot levy TRS or USF assessments on interstate and international calls or revenues. It is axiomatic that the TRA only has authority with respect to intrastate, not interstate/international services.

To resolve this problem, AT&T recommends that the definition of "Gross Receipts" set forth in 1220-4-14-.01(8) be revised so that it will read "Gross Receipts means intrastate end user telecommunications service revenues". Conforming changes to Section 1220-4-14-.05(2) are also recommended.

This is consistent with the approach taken by the FCC. The FCC's Order in WC Docket No. 04-36, released June 15, 2007, makes clear, for example, that interconnected VOIP providers are required to contribute to the federal interstate TRS fund on the basis of their interstate end user telecommunications revenues. (See page 2 of Order.) Moreover, ILECs, IXCs, CLECs, and wireless carriers providing traditional non-VoIP service also contribute to federal TRS based on their interstate end user telecommunications revenues. The FCC has determined that every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end user telecommunications revenues. See 47 CFR § 64.604(c)(5)(iii)(A). AT&T believes that this clarification will promote consistency with the federal TRS funding mechanism as well as avoid any unintended and inappropriate state TRA assessments based on interstate calls or revenues. Adopting this clarification will also reduce the risk of a company being "double assessed" by federal and state TRS programs on the same revenue.

2. Proposed Rule 1220-4-14-.05

If the TRA decides to require VoIP providers to participate in state TRS funding, AT&T recommends adding a new subsection to this part of the Proposed Rule:

Interconnected VoIP providers are required to report all intrastate end user service revenues billed to their customers. Interconnected VoIP providers may choose among the same three methods for determining required contributions to the TRS program that the FCC has found appropriate for determining interconnected VoIP providers contributions to the federal USF and TRS, namely, "safe harbor", actual revenue allocations between interstate and intrastate calls, and the results of a traffic study.

Again, as explained below, this clarification would promote consistency with the federal TRS program. (See FCC Order in WC Docket No.04-36 Released June 15, 2007 at Pages 19-22.)

On July 17, 2008, AT&T requested that the FCC confirm that interconnected VoIP services provided by all providers, whether nomadic or facilities-based, are subject to the FCC's jurisdiction and that legacy state economic common carrier regulation is inconsistent with federal policy and therefore preempted. AT&T also requested that the FCC make clear that states can require VoIP providers to contribute to state TRS programs on the same basis as other comparable service providers, *if* states structure these contribution obligations consistent with FCC rules, namely that:

- Because states are preempted from assessing interstate/international revenues, where a VoIP provider avails itself of the safe harbor established by the FCC for federal TRS contribution purposes (which currently estimates

that an interconnected VoIP provider's interstate revenue is 64.9%), a state may not require state TRS assessments on more than the inverse of the interstate safe harbor revenues (i.e., currently, 35.1 % of revenue attributable to customers in the state) (see FCC Order in WC Docket No. 04-36 Released June 15, 2007 at Pages 19-22);

- Based on principles of competitive neutrality, all interconnected VoIP providers – nomadic and facilities-based alike – must be treated the same for purposes of state TRS contribution requirements; and
- Like mobile wireless carriers, interconnected VoIP providers must be permitted to make reasonable assumptions to determine the customers (and therefore, revenues or other contribution base) associated with any given state, so that no revenue is subjected to state TRS contribution requirements by more than one state (discussed further below).

Again, this revision is necessary because it is important that the TRA's TRS program complement and not conflict with the federal TRS program.

3. Proposed Rule 1220-4-14-.05

(a) AT&T recommends adding the following new subsection to this part of the Proposed Rule:

Wireless providers may calculate their assessable revenues using end user customers' place of primary use instead of the customer's billing address.

(b) If the TRA decides to require VoIP providers to participate in state TRS funding, AT&T recommends adding the following new subsection to this part of the Proposed Rule:

Interconnected VoIP providers may calculate their assessable revenues using end user customers' service addresses instead of the customer's billing address.

For wireless service, customers often have billing addresses in one state, but primarily use their mobile wireless services in another state, i.e., their place of primary use (PPU). AT&T, like most (if not all) other wireless carriers calculate assessable revenues for TRS and other purposes on the basis of customers' PPUs, and not billing addresses.* Similarly, AT&T VoIP service TRS assessments in other states are based on service address rather than billing address. This new subsection will also serve to minimize confusion and duplication of different state assessments. For example, if a wireless customer has a Tennessee billing address but a Kentucky place of primary use, the customer may be billed an itemized charge for Tennessee TRS pursuant to 1220-4-14-.05(3) even though the vast majority of that customer's intrastate wireless calls are made from Kentucky and to others in Kentucky, and perhaps more significantly, the customer could be subject to assessment under both the Kentucky and Tennessee programs. AT&T Mobility and other wireless providers have established mechanisms for using customers' place of primary use to calculate state taxes and fees on end user bills.

* Under the federal Mobile Telecommunications Sourcing Act ("MTSA"), 4 U.S.C. §§ 116-126, the sourcing for taxes and fees will be based on the customer's PPU, i.e., "the street address representative of where the customer's use of the mobile telecommunications service primarily occurs" and must be either "the residential street address or the primary business street address of the customer". This definition is incorporated in the Tennessee sales tax at Tenn Code Annot. § 67-6-102(55).

Assessments for Tennessee's TRS should be done in a consistent manner to avoid subjecting providers and their customers to potentially conflicting and duplicative assessments by multiple states.

4. Proposed Rule 1220-4-14-.05

AT&T recommends adding a new subsection (4) to this part of the Proposed Rule:

Contributing Service Providers shall have ninety (90) days from the effective date of Chapter 1220-4-14 to comply with its requirements.

Because the Proposed Rule will require participation by service providers who have not participated in state TRS support in the past, AT&T recommends that a ninety day period following completion of the posting of the Proposed Rule by the Secretary of State be provided to allow for implementation. For example, VoIP providers (if they continue to be included within the purview of the Proposed Rule) and wireless service providers, both of whom have not been subject to TRS assessments in the past, will need time to insure that end users are billed correctly to recover TRS assessments.

III. Summary

While not resolving the jurisdictional issues, adoption of AT&T's suggested revisions by the TRA will promote participation by more service providers to support TRS in Tennessee. Allowing the wireless providers, for example, flexibility to use existing mechanisms and billing processes that are used to comply with federal TRS will reduce the likelihood of opposition, error and delay. Adoption of these revisions will also serve to avoid unintended and inappropriate state TRS assessments on interstate and international call revenues. Finally, adoption of these revisions will allow the TRA's TRS program to complement rather than conflict with the federal TRS program.

Respectfully submitted,

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d/b/a AT&T Tennessee

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