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February 26, 2007

Chairman Sara Kyle  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee 37243

05-00284

Re: Rulemaking to Establish Criteria for Designating Eligible Telecommunications  
(ETCs) in Tennessee

Dear Chairman Kyle:

Please find enclosed the original and thirteen (13) copies of United Telephone-Southeast, Inc.'s, d/b/a Embarq's ("Embarq's") proposed version of rules to establish criteria for designating eligible telecommunications carriers in Tennessee.

Please do not hesitate to contact me with any questions concerning this filing.

Sincerely yours,

Edward Phillips

HEP:sm

Enclosures

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Substance of Proposed Rules  
Chapter 1220-4-15  
Regulations For Eligible Telecommunications Carriers

Tennessee Regulatory Authority New Rule 1220-4-15, shall read:

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1220-4-15-.01 Application and Purpose

- (1) These rules shall apply to public utilities providing telephone and telegraph services, and CMRS telecommunications service where applicable, as defined in Tennessee Code Annotated § 65-4-101.
- (2) These rules define the Tennessee requirements for designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of receiving federal universal service support pursuant to 47 U.S.C. § 214(e), including ETC requirements associated with the Lifeline and Link Up low-income assistance programs.
- (3) These rules define the annual certification requirements that shall be met by ETCs designated by the Authority for continued receipt of federal universal support.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

1220-4-15-.02 Definitions

- (1) "Authority" — means the Tennessee Regulatory Authority.
- (2) "Eligible Telecommunications Carrier" — means a carrier designated as such by the Authority to receive universal service support distributed pursuant to 47 C.F.R. § 54.201, and who is eligible to receive universal service support distributed pursuant to 47 U.S.C. § 214(e).
- (3) "Incumbent Local Exchange Carrier" — means a local exchange carrier that: provided telephone exchange service on February 8, 1996; and was deemed to be a member of the exchange carrier association pursuant to 47 C.F.R. § 69.601; or is a person or entity that on or after February 8, 1996, became a successor or assign of a member of the exchange carrier association. This definition does not include telephone cooperatives.

- (4) "Lifeline" — means a retail local service offering that is available only to qualifying low-income consumers who may pay reduced charges as a result of the application of the federal Lifeline support, including the services or functionalities described in 47 C.F.R. § 54.101(a)(1) - (a)(9).
- (5) "Link Up" — means an assistance program for qualifying low-income consumers that provides for a reduction in a carrier's customary charge for connecting telecommunications service for a single telecommunications connection at the consumer's principle place of residence; and/or a deferred schedule for payment of the charges assessed for connecting services for which the consumer does not pay interest.
- (6) "Local Exchange Carrier" - means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of commercial mobile service under section 332(c) of the Telecommunications Act of 1996, except to the extent that the Federal Communications Commission finds that such service should be included in the definition of such term.
- (7) Newly Designated ETC — means any telecommunications services provider that has been designated as an eligible telecommunications carrier by the Authority after the adoption of these rules.
- (8) "Outage" — means a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network.
- (9) "Rural Telephone Company" — means a local exchange carrier operating entity as defined by 47 C.F.R. § 57.5.
- (10) "Toll Limitation" — means either toll blocking or toll control for eligible telecommunications carriers that are capable of providing both services. For eligible telecommunications carriers that are capable of providing both services, "toll limitation" denotes both toll blocking and toll control.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

#### 1220-4-15-.03 Requirements for initial designation as an Eligible Telecommunications Carrier

- (1) The Authority may upon its own motion or upon request, designate a common carrier that meets the requirements below as an Eligible Telecommunications Carrier for a designated service area.

(2) Upon request and consistent with the public interest, convenience and necessity, the Authority may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an Eligible Telecommunications Carrier for a service area designated by the Authority.

(3) Any local exchange carrier, if certified to provide telecommunications services in Tennessee by the Authority, or CMRS provider licensed in Tennessee by the Federal Communications Commission, as applicable, may request designation as an Eligible Telecommunications Carrier for the purpose of receiving federal universal support. Except as provided in 1220-4-15-.05(3), local exchange carriers designated ETCs prior to the adoption of these rules are not required to reapply for designation as an ETC. Local exchange carriers seeking designation as an ETC by the Authority shall file, with its application to the Authority, the following:

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(a) Each applicant shall certify by affidavit signed by an officer of the company that it does or will offer the services that are supported by the federal universal service support mechanisms under 47 § C.F.R. 54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services. If resale is used, the applicant shall also certify that it will replace resold services with services provided over own facilities within three years from the date the applicant is designated an ETC by the Authority.

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(b) Each applicant shall demonstrate with copies, or an affidavit by an officer of the company, that it does or will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges.

(c) Each applicant shall provide a two-year improvement plan demonstrating how high-cost universal service support will be used to improve coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive federal universal service support. The improvement plan shall:

1. include a specific description of proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis, throughout its proposed designated service area;

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2. include how federal high-cost universal support will be used for service improvements on a wire center-by-wire center basis that would not occur absent receipt of such support;

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3. state how it will improve its network to ensure that unserved and under-served areas throughout its proposed designated service area will receive sufficient signal quality, coverage and capacity as the

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result of receiving federal Universal Service Fund support;

4. contain the projected start date and completion date for each improvement, and include the estimated amount of investment for each project to be funded by high-cost support;
  5. indicate the specific geographic area where the improvements will be made;
  6. indicate the estimated population that will be served as a result of the improvements; and
  7. include a statement explaining why improvements in a given wire center are not needed,
- (d) If the applicant is not a rural telephone company, the applicant shall submit a detailed description, which may require maps, of the service area for which it seeks Eligible Telecommunications Carrier designation.
- (e) Each applicant must make a statement, and include its intentions to honor any reasonable service requests from all customers including those that it may not currently be able to serve but who are in its current, or proposed, service area.
- (f) Each applicant shall demonstrate or state that it has the ability to maintain service in emergency situations.
1. The applicant shall provide a detailed description of its emergency power capabilities, including battery back-up, and whether it is fixed on site, or with use of available mobile units. The description must include the length of time emergency power will be available in any given situation.
  2. The applicant shall provide an emergency restoration plan, including but not limited to emergency services availability (911/E911) and traffic rerouting capability.
- (g) Each applicant shall demonstrate that it offers Lifeline and Link Up service in the designated service area to all qualifying low-income consumers.
- (h) Each applicant shall demonstrate that it is, or will, advertise the availability of Lifeline and Link Up service in a manner reasonably designed to reach those likely to qualify for the service.
- (i) Each applicant shall demonstrate that it satisfies consumer protection and service quality standards by making a statement concerning its intent to comply with state law and Authority rules and regulations.

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(j) Each applicant shall certify by affidavit signed by an officer of the company its ability and intent to offer local usage plans comparable to those offered by the incumbent local exchange carrier ("ILEC") in all areas for which it seeks designation and shall file with the Authority service tariffs, listings of services offered and/or calling plans and rates for its local usage plans.

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(k) Each applicant shall certify by affidavit signed by an officer of the company that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.

(4) The Authority will analyze the public interest benefits of each applicant in a manner consistent with the purposes of the Act including the goals of preserving service, ensuring the availability of quality service at just, reasonable, and affordable rates and promoting the deployment of advanced telecommunications and information services to all areas within the state. In analyzing the public interest benefits the Authority shall consider:

(a) the benefits of increased consumer choice, the unique advantages and disadvantages of the applicant's service offering;

(b) whether the applicant's petition displays an over-reliance on resale;

(c) whether the applicant intends to serve high-cost rural areas using its own network or primarily using resale; and

(d) whether the applicant will engage in creamskimming and whether the applicant will use USF support to build-out its network to serve high-cost areas.

(5) In instances where an ETC applicant seeks designation below the study area level of a rural telephone company, the Authority shall also conduct a creamskimming analysis that compares the following:

(a) the population density of each wire center or sub-wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers or sub-wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation;

(b) the existing facilities of the applicant throughout the wire center or sub-wire center and the degree to which resale will be relied upon in these areas for service to the wire center or sub-wire center by the applicant; and

(c) the densities of the areas in which the applicant will rely on resale and whether they vary significantly from the densities of the areas served with the applicant's own facilities. In its creamskimming analysis, the Authority shall consider other factors, such as disaggregation of support by the incumbent local exchange carrier.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

1220-4-15-.04ETC Requirements for Lifeline and Link Up Services

- (1) ETCs shall offer Lifeline service in the designated service area to all qualifying low-income consumers in accordance with the federal lifeline service guidelines as follows:
  - (a) ETCs shall advertise the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.
  - (b) ETCs shall commit to offer toll limitation to all qualifying low-income consumers at the time such consumers subscribe to Lifeline service. If the consumer elects to receive toll limitation service, that service becomes part of that consumer's Lifeline service.
    1. ETCs may not collect a service deposit in order to initiate Lifeline service if the qualifying low-income consumer voluntarily elects toll limitation service from the carrier where available.
    2. If toll limitation services are unavailable, the carrier shall notify the Authority. The Authority may authorize the carrier to charge a service deposit in these limited situations.
  - (c) ETCs shall verify once a year that its Lifeline customers meet the program qualification.
  - (d) ETCs shall notify Lifeline subscribers a minimum of sixty (60) days prior to termination of their service if the carrier has a reasonable basis to believe that the subscriber no longer meets the Lifeline qualifying criteria. The termination notice shall also include a telephone number for subscribers to call to obtain assistance for recertification of Lifeline services.
  - (e) Following a Lifeline subscriber's submission of renewed or updated proof of eligibility for Lifeline service, if service cannot be immediately restored, the providing ETC shall credit the subscriber's account for anytime Lifeline service was not received after the date of its receipt of proof of continued eligibility.
  - (f) ETCs shall not charge Lifeline customers a monthly number-portability

charge.

- (g) ETCs receiving a Lifeline application in error, from a subscriber not its customer, shall immediately forward that application to the Authority's Consumer Services Division for the appropriate consumer contact and application disposition.
- (2) ETCs shall offer Link Up service in the designated service area to all qualifying low-income consumers, in accordance with the following guidelines:
- (a) ETCs shall advertise availability of Link Up service in a manner reasonably designed to reach those likely to qualify for the service.
  - (b) ETCs shall provide a reduction of the customary charge for connecting telecommunications service for a single line at the consumer's principal place of residence. The reduction shall be half of the customary charge, or \$30, whichever is less.
  - (c) ETCs shall establish a deferred schedule for payment of assessed Charges, without interest, for up to \$200 in connection charges for a period not to exceed one year. Charges assessed for connecting service may include any charges that the carrier customarily assesses to connect subscribers to the network, but do not include permissible security deposits.
  - (d) ETCs shall offer that qualifying low-income consumers may choose one or both of the programs set forth in (b) and (c) above.
  - (e) ETCs shall allow a consumer to receive the benefits of (b) and/or (c) above for a second or subsequent time only for a principal place of residence with an address different from the residence address at which Link Up assistance was provided previously.
- (3) ETCs may receive federal universal service support reimbursement for the revenue that is not realized by reducing their customary charges for connecting telecommunications service, and for providing a deferred schedule for payment of assessed charges without interest provided:
- (a) the Eligible Telecommunications Carrier keeps accurate records of the revenues they forgo in reducing their customary charge for connecting telecommunications service and for providing a deferred schedule for payment of the assessed charges for which the consumer does not pay interest;
  - (b) the records in (a) above shall be kept in the form directed by the Universal Service Administration Company; and
  - (c) the revenues for which the Eligible Telecommunications Carrier may



receive reimbursement shall include only the difference between the carrier's customary connection or interest charges and the charges actually assessed to the participating low-income consumer.

- (4) Eligible Telecommunications Carriers must maintain records to document compliance with all federal and state requirements governing the Lifeline and Link Up programs for three full preceding calendar years and provide that documentation upon request to the Federal Communications Commission, the Universal Service Administration Company or the Authority.
- (5) Eligible Telecommunications Carriers shall maintain all qualifying consumer documentation presented by a consumer or by the Authority as qualification for receiving Lifeline and/or Link Up service for as long as the consumer receives the service or until audited by the Universal Service Administrator in accordance with federal records retention rules.
- (6) Eligible Telecommunications Carriers providing Lifeline discounted wholesale service to a reseller shall obtain certification from that reseller that it is complying with all federal and state requirements governing the Lifeline and Link Up programs.

Authority: T.C.A. §§ 65-2-102 and 65-4-104

#### 1220-4-15-.05 Annual ETC Certification Requirements

- (1) In order to receive federal universal service support Eligible Telecommunications Carriers designated by the Authority shall submit to the Authority the following information as specified in the sub-sections below by August 1<sup>st</sup> of each year. The information provided should cover the previous twelve (12) month period ending June 30<sup>th</sup>.
  - (a) Newly designated ETCs shall file a progress report at the wire center level on the two-year service quality improvement plan, including maps, detailing progress towards meeting the planned targets, including:
    - 1. an explanation of the amount of universal service support that has been received during the previous twelve (12) months and how the support was used to improve service, signal quality, coverage, or capacity; and
    - 2. an explanation regarding any network improvement targets that have not been fulfilled.
  - (b) All ETCs designated by the Authority shall file detailed information on any outage lasting at least thirty (30) minutes with 900,000 user minutes "potentially" affected, for any service area in which an ETC is designated, for any facility it owns, operates, leases, or otherwise utilizes. An ETC's annual outage report must include:

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1. the date and time of the onset of the outage;
2. a brief description of the outage and its resolution;
3. the particular services affected;
4. the geographic area affected by the outage;
5. steps taken to prevent a similar situation in the future; and
6. the number of customers affected.

(c) A newly designated ETC shall submit a report that includes the number of requests for service from potential customers within its service area(s) that were unfulfilled for the past year. Such ETC must detail how it attempted to provide service to those potential customers.

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(d) All ETCs designated by the Authority shall report the number of Lifeline customers and the number of customers that received Link Up assistance as of Dec 31.

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(e) All ETCs designated by the Authority shall report the number of complaints per 1,000 handsets or lines.

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(f) All ETCs designated by the Authority must provide certification attesting to compliance with applicable service quality standards and consumer protection rules.

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(g) All ETCs designated by the Authority must provide certification attesting to the continued ability to function in emergency situations.

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(h) All newly designated ETCs must provide certification attesting that local usage plans are comparable to that offered by the incumbent LEC in the relevant service areas.

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1. In addition to the attesting statement, each ETC shall also submit at least one of the following as a demonstration of compliance with this requirement:

(i) service tariffs detailing its service areas; or

(ii) listings of service offerings and/or calling plans and rates.

(i) All newly designated ETCs must acknowledge the requirement to provide equal access to long distance carriers in the event no other eligible telecommunications carrier is providing equal access within a particular service area.

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(j) In addition to other applicable reporting requirements contained in these rules, all ETCs shall certify annually to the Authority that federal Universal Service Fund support received in the preceding year is being used for the purposes intended.

- (k) For any ETCs where the above requirements duplicate a regular report previously submitted to the Authority, such ETCs may submit a statement indicating compliance and identifying the date(s) and report(s) submitted that contain the required information.

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- (2) The Authority will review each ETC's annual submission, and if it is found to be in compliance with federal and state regulations and rules, the Authority will notify the Federal Communications Commission and the Universal Service Administration Company certifying each company's compliance by October 1<sup>st</sup> of the reporting year. This will ensure that each ETC designated by the Authority is authorized to receive federal support for the upcoming fiscal year.
- (3) Upon request by any newly designated ETC designated after the adoption of these rules, the Authority may terminate these reporting requirements if the petitioning ETC has met all of the requirements set forth in these rules within the previous three years.

Authority: T.C.A. §§ 65-2-102 and 65-4-104