

# Director Ron Jones's Suggested Modifications to the Proposed Rules

Docket No. 05-00284: *Rulemaking to Establish Criteria for Designating Eligible Telecommunications Carriers (ETCs) In Tennessee*

(Offered for Consideration at the April 16, 2007 Authority Conference)

Suggested Modification (additions / deletions)	Reason
<b>Rule 1220-4-15-.02(6):</b> "Local Exchange Carrier" – means any person or entity that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person or entity in so far as such person or entity is engaged in the provision of commercial mobile service under 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.	This change is suggested for the purpose of clarification.
<b>Rule 1220-4-15-.03(3)(b):</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 <u>and charges</u> of such services.	The phrase "and charges" was added to make the rule consistent with 47 C.F.R. § 54.201(d)(2).
<b>Rule 1220-4-15-.03(c)(7):</b> (7) include a statement explaining why improvements in a given wire center are not needed, and demonstrate how the funding will otherwise be <del>utilized</del> <u>used</u> to further the provision of supported services in that area.	These changes are proposed to better track the FCC's language in 47 C.F.R. § 54.202(a)(1)(ii) and to promote clarity of intent.
<b>Rule 1220-4-15-.03(3)(k):</b> Each applicant shall acknowledge that it may be required to provide equal access to long distance carriers in the event that no other ETC is providing <u>equal access within the service area.</u> <del>if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.</del>	These changes are proposed to better track the FCC's language in 47 C.F.R. § 54.202(a)(5) and to promote clarity of intent.
<b>Rule 1220-4-15-.03(4):</b> 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. <u>In addition, in instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Authority shall conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation. In its creamskimming analysis, the Authority shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 by the incumbent local exchange carrier.</u>	These changes are proposed to better track the FCC's language in 47 C.F.R. § 54.202(c) and to promote clarity of intent. This modification incorporates the creamskimming analysis contained in the FCC rule. I believe it important for the Authority to openly acknowledge its responsibility to evaluate creamskimming as part of the ETC evaluation process. Recognition of a creamskimming analysis was proposed by Embarq in the rulemaking process, although its proposed language differs somewhat from that proposed here.

Suggested Modification (additions / deletions)	Reason
<p><b>Rule 1220-4-15-.04(1)(b)(2):</b>            If toll limitation services are unavailable, the carrier shall notify the Authority. The Authority <del>may authorize the carrier to</del> <u>may</u> charge a service deposit in these limited situations.</p>	<p>These changes are proposed to better track the FCC's language in 47 C.F.R. § 54.401(c) and to promote clarity of intent. Additionally, a similar modification was suggested by the Rural Coalition on the ground that the rule as currently drafted is inconsistent with the FCC's rule.</p>
<p><b>Rule 1220-4-15-.04(f):</b>            ETCs shall not charge Lifeline customers a late payment fee.</p>	<p>It is my position that this item should not appear in these rules. The rate charged to subscribers that qualify for Lifeline benefits is a just and reasonable rate for those subscribers. Lifeline subscribers should be held no less responsible for the payment of a just and reasonable rate than non-Lifeline subscribers. Therefore, it is my opinion that an across-the-board bar to charging late fees to Lifeline subscribers is unacceptable.</p>
<p><b>Rule 1220-4-15-.04(6):</b>            ETCs shall maintain all qualifying consumer documentation presented by a consumer <u>or by the Authority</u> 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.</p>	<p>This modification is made as a result of the comment and proposal of Embarq that it also receives qualifying information from the Authority. This qualifying information should also be retained by the ETC.</p>
<p><b>Rule 1220-4-15-.05(1)(b):</b>            Detailed information on any outage, <u>as that term is defined in 47 C.F.R. § 4.5,</u> lasting at least thirty (30) minutes affecting 10% of end users within any exchange 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:</p>	<p>These modifications are proposed to better track the FCC's language in 47 C.F.R. § 54.209 and to promote clarity of intent. Additionally, the suggestions will allow for flexibility in the event the FCC alters its definition of outage in the future.</p>
<p><b>Rule 1220-4-15-.05(1)(h):</b>            G<u>certification</u> attesting that local usage plans are comparable to those offered by the incumbent LEC in the relevant service areas. <u>Incumbent Local Exchange Carriers subject to the Authority's jurisdiction are excepted from this requirement.</u></p>	<p>This modification is proposed as a result of the comments of the Rural Coalition. While it may seem obvious to some that ILECs should not have to comply with this requirement, apparently there is some confusion. Further, I can find no reason to reject the proposal.</p>