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April 25, 2007

VIA HAND DELIVERY

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

filed electronically in docket office on 04/25/07

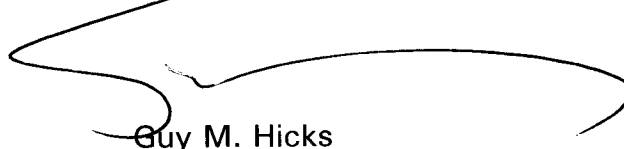
*Re: Rulemaking to Establish Criteria for Designating Eligible
Telecommunications Carriers (ETCs) in Tennessee*
Docket No. 05-00284

Dear Chairman Kyle:

Enclosed are the original and four copies of the *Comments of AT&T
Regarding Director Jones' Suggested Modifications to the Proposed ETC Rules.*

A copy is being provided to counsel of record.

Very truly yours,

A handwritten signature in black ink, appearing to be "Guy M. Hicks", written over a horizontal line.

Guy M. Hicks

GMH:ch

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

April 25, 2007

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

**COMMENTS OF AT&T REGARDING DIRECTOR JONES' SUGGESTED
MODIFICATIONS TO THE PROPOSED ETC RULES**

BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee, on behalf of itself and the subsidiaries and affiliates of AT&T Inc. that provide service in Tennessee (collectively, "AT&T"), respectfully submits the following comments regarding Director Jones' suggested modifications to the Eligible Telecommunications Carrier ("ETC") rules proposed by the Staff of the Tennessee Regulatory Authority ("TRA Staff"). For convenience, the TRA Staff's proposed ETC rules and Director Jones' suggested revisions to such rules are collectively attached hereto as Exhibit 1.

Rule 1220-4-15-.03(3)(k) – AT&T proposes adding the following language to the proposed rule, as modified by Director Jones: "subject to the applicant's obligations under federal law." With this addition, the proposed rule, as modified by Director Jones would state:

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 equal access within the service area, subject to the applicant's obligations under federal law.

The additional language proposed by AT&T makes clear that the exclusive authority to impose equal access obligations on wireless carriers resides with the Federal Communications Commission (“FCC”).¹


Rule 1220-4-15-.05(1)(b) – Regarding outage reporting, Director Jones suggested adding language which provides that the term “outage” is defined in 47 C.F.R. § 4.5 for purposes of this rule. According to Director Jones, this modification is intended “to better track the FCC’s language in 47 C.F.R. § 54.209” regarding the definition “outage” and the reporting of the same.

AT&T opposes Director Jones’s suggested additional language. The additional language may impose additional, yet unnecessary, reporting requirements. All carriers (including wireless carriers) are currently required to comply with the service outage reporting requirements set forth in the FCC’s rules regarding service outage reporting, 47 CFR 4.1 *et seq.* The outage reporting requirements for all carriers that is contained in part 4 of the FCC’s rules regarding disruptions to communications (47 CFR 4.9(e)) differ from the outage reporting requirements set forth in the FCC’s ETC rules. (47 CFR 54.209(a)(2)). It is AT&T’s position that so long as a carrier complies with the FCC’s outage reporting requirements as stated in the FCC’s outage rules, then there should be no need to impose additional outage reporting requirements for ETC purposes. Because Director Jones’ proposal could be construed in such a manner, AT&T opposes his suggested revision to this rule.

¹ See 47 U.S.C. § 332(c)(8) and 47 CFR 54.202(a)(5).

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.
dba AT&T TENNESSEE



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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
Rule 1220-4-15-.02(6): "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 <u>or entity</u> in so far as such person <u>or entity</u> 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.
Rule 1220-4-15-.03(3)(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).
Rule 1220-4-15-.03(c)(7): (7) include a statement explaining why improvements in a given wire center are not needed, and demonstrate how the funding will otherwise be utilized <u>used to further the provision of supported services in that area.</u>	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.
Rule 1220-4-15-.03(3)(k): Each applicant shall acknowledge that it may be required to provide equal access <u>to long distance carriers in the event that no other ETC is providing equal access within the service area.</u> if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act.	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.
Rule 1220-4-15-.03(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. <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>Rule 1220-4-15.04(1)(b)(2): If toll limitation services are unavailable, the carrier shall notify the Authority. The Authority may authorize the carrier to <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>Rule 1220-4-15.04(f): 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>Rule 1220-4-15.04(6): 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>Rule 1220-4-15.05(1)(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>Rule 1220-4-15.05(1)(h): Ccertification 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>

DRAFT RULES
OF THE
TENNESSEE REGULATORY AUTHORITY
DIVISION OF PUBLIC UTILITIES
Chapter 1220-4-15

REGULATIONS FOR ELIGIBLE TELECOMMUNICATIONS CARRIERS

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 the 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.

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 or entity 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) "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.
- (8) "Rural Telephone Company" – means a local exchange carrier operating entity as defined by 47 C.F.R. § 57.5.
- (9) "Toll Limitation" – means either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, "toll limitation" denotes both toll blocking and toll control.

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 local exchange carrier that meets the requirements below as an Eligible Telecommunications Carrier for a designated service area. CMRS providers shall be designated as ETCs for designated service areas by the Federal Communications Commission in accordance with 47 U.S.C. § 214(e)6.
- (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 certified to provide telecommunications services in Tennessee by the Authority may request designation as an Eligible Telecommunications Carrier for the purpose of receiving federal universal

support. Local exchange carriers certified by the Authority shall file, with its application to the Authority, the following:

- (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.
- (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;
 - (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;
 - (3) state how signal quality, coverage or capacity will improve due to receipt of high-cost support throughout the service area for which the applicant seeks an Eligible Telecommunications Carrier designation;
 - (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, and how the funding will otherwise be utilized.
- (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 re-routing capability.
- (g) Each applicant shall demonstrate that it offers Lifeline and Link Up service in the designated service area to 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.
- (j) Each applicant shall affirm its ability to offer local usage plans comparable to those offered by the incumbent local exchange carrier ("ILEC") in the areas for which it seeks designation by submission of service tariffs, listings of services offered and/or calling plans and rates or other verification.
- (k) Each applicant shall acknowledge 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.

1220-4-15-.04 ETC 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 the time Lifeline service was not received after the date of its receipt of proof of

continued eligibility

- (f) ETCs shall not charge Lifeline customers a late payment fee.
 - (g) ETCs shall not charge Lifeline customers a monthly number-portability charge.
 - (h) 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 principle 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 qualifying low-income consumers the choice of 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.
- (5) ETCs 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.
- (6) ETCs shall maintain all qualifying consumer documentation presented by a consumer 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.
- (7) ETCs 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.

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

- (1) To continue receiving federal universal service support each Eligible Telecommunications Carrier designated by the Authority shall submit to the Authority the following information specified below by August 20th of each year. The information provided should cover the previous twelve (12) month period ending June 30th.
 - (a) 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, and 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) Detailed information on any outage 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:

- (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) The number of requests for service from potential customers within its service area(s) that were unfulfilled for the past year. The ETC must detail how it attempted to provide service to those potential customers.

(d) The number of Lifeline customers and the number of customers that received Link Up assistance as of December 31st.

(e) The number of complaints per 1,000 handsets or lines.

(f) Certification attesting to compliance with applicable service quality standards and consumer protection rules.

(g) Certification attesting to the continued ability to function in emergency situations.

(h) Certification attesting that local usage plans are comparable to those offered by the incumbent LEC in the relevant service areas.

(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) Acknowledgment of 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.
 - (j) In addition to other applicable reporting requirements contained in these rules, all ETCs shall certify annually to the Authority that federal support received in the preceding year is being used for the purposes intended and shall include an accounting of the funds received and their uses.
 - (k) Where the above requirements duplicate a regular report previously submitted to the Authority, ETCs may submit a statement indicating compliance and identifying the date(s) and report(s) submitted that contain the required information.
- (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 1st 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.

CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2007, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

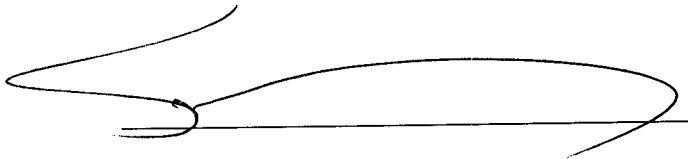
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A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end.