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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission: Tennessee Regulatory Authority
Division: Legal Division
Contact Person: J. Richard Collier, General Counsel
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact: ADA Coordinator
Address: 460 James Robertson Parkway, Nashville, TN 37243-0505
Phone: (615) 741-2904, ext. 251 or 1-800-342-8359, ext. 251
Email:

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	Hearing Room, Ground Floor 460 James Robertson Parkway
City:	Nashville, TN
Zip:	37243-0505
Hearing Date:	04/20/09
Hearing Time:	2:00 P.M. ☒ CST ☐ EST

Additional Hearing Information: n/a

Revision Type (check all that apply):

☐ Amendment
☒ New
☐ Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row.)

Chapter Number	Chapter Title
1220-04-16	
Rule Number	Rule Title
1220-04-16-.01	Purpose and Applicability
1220-04-16-.02	Definitions
1220-04-16-.03	Competitive Exemption Criteria for Business Services
1220-04-16-.04	Competitive Exemption Criteria for Residential Services
1220-04-16-.05	Competitive Exemption Procedures
1220-04-16-.06	Public Interest Considerations

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1220-4-16
Rules for Competitive Exemption for Price Regulated and Competitive Carriers

Table of Contents

1220-4-16-.01	Purpose and Applicability
1220-4-16-.02	Definitions
1220-4-16-.03	Competitive Exemption Criteria for Business Services
1220-4-16-.04	Competitive Exemption Criteria for Residential Services
1220-4-16-.05	Competitive Exemption Procedures
1220-4-16-.06	Public Interest Considerations

1220-4-16-.01 Purpose and Applicability

- (1) The purpose of this rule is to provide a streamlined and uniform process by which price regulated incumbent local exchange carriers and competitive local exchange carriers may apply for a Competitive Exemption for services within portions or all of a service territory.
- (2) A rate-of-return regulated local exchange telecommunications company may not seek a Competitive Exemption under this rule until it enters into price regulation pursuant to T.C.A. § 65-5-109.

1220-4-16-.02 Definitions

- (1) Any term used in these rules that has been defined by statute shall have the meaning given the term in that particular statute.
- (2) For the purposes of these rules the following terms shall have the following meanings, unless the context clearly requires otherwise.
 - (a) "Authority" refers to the Tennessee Regulatory Authority.
 - (b) "Competitive Exemption" is the exempting of a service or group of services from certain statutory requirements and Authority rules when it is demonstrated pursuant to this rule that existing or potential competition is an effective regulator of price for the service or group of services as set forth in T.C.A. § 65-5-108(b).
 - (c) "Competitive local exchange carrier (CLEC)" refers to a provider of telecommunications service that is certificated by the Authority to provide telecommunications services after June 6, 1995.
 - (d) "Exchange" refers to the area within which local telephone service is furnished at the exchange rates applicable within that area.
 - (e) "Facilities-based telecommunications provider" refers to a provider of telecommunications service that utilizes facilities that it owns or leases to provide telecommunications service to its end-user customers.
 - (f) "Non-affiliated telecommunications provider" refers to a telecommunications provider that does not share a common corporate parent company with the petitioning telecommunications service provider.
 - (g) "Price regulated local exchange telephone company" refers to an incumbent local exchange carrier that has elected price regulation under T.C.A. § 65-5-109.

- (h) "Rate-of-return regulated incumbent local exchange telephone company" refers to a local exchange carrier that has not elected price regulation under T.C.A. § 65-5-109.
- (i) "Stand-alone service" refers to a basic local exchange telephone service as defined in T.C.A. § 65-5-108(a)(1) not offered as part of a bundle of telecommunications services.
- (j) "Telecommunications service" means any two-way communications service, telephone service, telegraph service, paging service, or communications service similar to such services.
- (k) "Wireless service" means a provider of commercial mobile services or any other radio communications service that the Federal Communications Commission requires to provide wireless 9-1-1 service as defined in 47 U.S.C. § 615.
- (l) "Voice Over Internet Protocol (VoIP)" is a technology that delivers voice communications over Internet Protocol ("IP") networks such as the Internet or other packet-switched networks.

1220-4-16-.03 Competitive Exemption Criteria for Business Services

- (1) Where a petition seeks Competitive Exemption for business services, the petitioner must show that each exchange has at least two providers that are capable of offering business service in the areas where Competitive Exemption is requested. At least one provider must be a non-affiliated telecommunications provider.
- (2) When counting the number of providers for the purpose of evaluating a Competitive Exemption petition for business services, cable television providers that offer telephone and broadband services to business customers, providers of wireless service and providers of Voice over Internet Protocol service may be included.

1220-4-16-.04 Competitive Exemption Criteria for Residential Services

- (1) Where a petition seeks Competitive Exemption for residential services, the petitioner must show each exchange has at least two non-affiliated telecommunications providers that offer service to customers in each exchange in the areas where Competitive Exemption is requested. At least one provider must be facilities-based and currently serving residential customers.
- (2) When counting the number of providers for the purpose of evaluating a Competitive Exemption petition for residential services, cable television providers that offer telephone and broadband services to residential customers may be included. Non-affiliated providers of wireless service may be included in the count of providers but shall only count as one provider regardless of the number of wireless providers. Non-affiliated providers of Voice over Internet Protocol service shall not be counted for the purpose of evaluating the competitive exemption for residential service unless the carrier seeking exemption offers a data service capable of supporting Voice over Internet Protocol service and does not require the purchase of voice telephony products to buy the data service.

1220-4-16-.05 Competitive Exemption Procedures

- (1) A price regulated telecommunications provider may file a petition with the Authority seeking Competitive Exemption for a service or group of services pursuant to T.C.A. § 65-5-108(b) for any geographic area, tariffed rate-group or service territory.
- (2) The Authority shall evaluate the petition for Competitive Exemption by separately determining if each exchange within the geographic area, tariffed rate-group or service territory meets the standards set forth Rule 1220-4-16-.03 for business services and Rule 1220-4-16-.04 for residential services.
- (3) The petition shall include: a list of exchanges in the geographic area, tariffed rate-group or service territory for which Competitive Exemption is sought and the names of competitors serving or capable of serving the exchange and the services offered.

- (4) If the petition for Competitive Exemption includes services that are offered to both business and residential customers, the Authority shall separately evaluate the exemption request for business and residential customers.
- (5) A petition for Competitive Exemption filed pursuant to these rules shall be deemed a contested case proceeding as defined in T.C.A. § 4-5-102(3) and T.C.A. § 65-2-101(2). Upon the filing of a petition, the General Counsel of the Authority shall appoint a Hearing Officer to prepare the matter for hearing before the Authority. The Hearing Officer shall issue a procedural schedule for the docket within ten (10) days of the date of filing of the petition. Because of the expeditious nature of the proceeding under these rules, the requirements for petitions for intervention shall be strictly construed, and the rules governing discovery shall be strictly enforced.
- (6) Where a petitioner establishes the criteria set forth in Rule 1220-4-16-.03 for business services or Rule 1220-4-16-.04 for residential services, a rebuttable presumption shall exist that the competition shown is an effective regulator of price of the service(s).
- (7) The Authority shall complete its investigation, hold a hearing and issue an order on the relief requested in the petition for Competitive Exemption within 90 days from the date of filing.
- (8) For any exchange where a price regulated incumbent local exchange carrier is granted Competitive Exemption, any CLEC operating in that exchange is also deemed granted Competitive Exemption and is therefore exempted from Title 65, Chapter 5, Part 1 and TRA Rules 1220-4-1, 1220-4-2, 1220-4-6 and 1220-4-8 with the exceptions noted in Rule 1220-4-16-.06.

1220-4-16-.06 Public Interest Considerations

- (1) Upon successful demonstration that competition is an effective regulator of price as set forth in Rule 1220-4-16-.05, the provider is exempt from all statutory provisions of Title 65, Chapter 5, Part 1 except for the following statutory requirements, the maintenance of which are necessary for consumer protection and in the public interest:
 - (a) T.C.A. § 65-5-107 Universal Service - Funding;
 - (b) T.C.A. § 65-5-110 Authority Jurisdiction;
 - (c) T.C.A. § 65-5-112 Small and minority-owned telecommunication business participation plan; and
 - (d) T.C.A. § 65-5-113 Assistance program for small and minority-owned businesses.
- (2) Granting an exemption under this rule does not alter the classification of intrastate revenues for the purpose of funding the TDAP program set forth in T.C.A. § 65-21-115 or the Tennessee Relay Service.
- (3) For services granted an exemption under this rule, all intrastate revenues shall continue to be considered gross receipts from intrastate operations for the purposes of T.C.A. § 65-4-303.
- (4) Granting an exemption under this rule does not diminish the Authority's delegated jurisdiction under the federal Telecommunications Act of 1996.
- (5) To ensure that affordable service alternatives remain available after a Competitive Exemption is granted, price regulated local exchange telecommunications companies must continue to offer stand-alone basic local exchange service to business and residential customers. The price of the service offering will be the same as the price existing on the date that Competitive Exemption is granted and may be increased annually by the rate of inflation using the gross domestic product-price index (GDP-PI) from the preceding year. Upon request, the carrier may petition the Authority to establish single rates for its residential and business stand-alone service offerings for its entire service territory.
- (6) Lifeline/Link-Up Tennessee, 911 Emergency Services and educational discounts existing as of January 1, 2009 shall remain in effect. The price regulated local exchange telecommunications

provider will file a price list for each service or discount listed in this section and update the list as necessary.

- (7) The petitioner shall provide 30 days notice to customers prior to increasing rates for any services for which Competitive Exemption is granted or the rates for stand-alone basic local exchange service to business and residential customers described in Rule 1220-4-16-.06(5).
- (8) For exempted services within exempted exchanges, telecommunication providers will be exempted from the following TRA Rules:
 - (a) 1220-4-1 General Public Utilities Rules with the exception of 1220-4-1-.08 Name Changes for Public Utilities.
 - (b) 1220-4-6 Ten Year Master Plan for Technology Deployment by Telephone Companies.
 - (c) 1220-4-8 Regulations for Local Telecommunications Providers with the exception of:
 - 1. 1220-4-8-.01 Definitions.
 - 2. 1220-4-8-.02 Certification policy and requirement.
 - 3. 1220-4-8-.03 General application requirement procedures for all competing local telecommunications service providers.
 - 4. 1220-4-8-.04 Application and certification requirements for competing telecommunications service providers - local service.
 - 5. 1220-4-8-.05 Abandonment or transfer of a certificate.
 - 6. 1220-4-8-.06 Inspection fees for competing telecommunications service providers.
 - 7. 1220-4-8-.09(3) Consumer complaints and violations of state law and Authority rules: Violation of state law or the Authority's rules applicable to providers certificated pursuant to this Rule Chapter may result in the imposition of fines or the revocation of the provider's certificate in accordance with the following procedure.
 - 8. 1220-4-8-.13 Enhanced 911 service requirements after deregulation.
 - (d) 1220-4-2 Regulations for Telephone Companies:
 - 1. 1220-4-2-.06(1) Data to be Filed with Authority Tariffs.
 - 2. 1220-4-2-.07 Meter Reading Equipment.
 - 3. 1220-4-2-.08 Meter Reading Interval.
 - 4. 1220-4-2-.14 Held Applications.
 - 5. 1220-4-2-.18 Grade of Service.
 - 6. 1220-4-2-.19 Inter-Exchange Trunks.
 - 7. 1220-4-2-.20 Grounded Circuits.
 - 8. 1220-4-2-.21 Selective Ringing.
 - 9. 1220-4-2-.22 Switching Service.
 - 10. 1220-4-2-.25 Provisions for Testing.
 - 11. 1220-4-2-.29 Basic Utility Obligations.

12. 1220-4-2-.30 Traffic Rules.
13. 1220-4-2-.32 Public Telephone Service.
14. 1220-4-2-.34 Service Objectives and Surveillance Levels.
15. 1220-4-2-.35 Installations of Service.
16. 1220-4-2-.36 Operator Handled Calls.
17. 1220-4-2-.37 Local Dial Service.
18. 1220-4-2-.38 Direct Distance Dial Service.
19. 1220-4-2-.39 Customer Trouble Reports.
20. 1220-4-2-.42 Measured and Message Telephone Service.
21. 1220-4-2-.55 Regulatory Reform.
22. 1220-4-2-.57(7) Rules and Regulations for Resellers of Telecommunication Services: Rates and Tariffs.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 2-25-09

Signature: Eddie Roberson

Name of Officer: Eddie Roberson

Title of Officer: Chairman



Subscribed and sworn to before me on: 2/25/2009

Notary Public Signature: L.L. Perrin

My commission expires on: 3/20/2010

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Tre Hargett
Tre Hargett
Secretary of State

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