

Notice of Rulemaking Hearing
Tennessee Regulatory Authority

There will be a hearing before the Tennessee Regulatory Authority to consider the promulgation of a rule pursuant to Tenn. Code Ann. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-204 and will take place in the Hearing Room of the Tennessee Regulatory Authority located at 460 James Robertson Parkway, Nashville, TN 37243 at 2:00 p.m. (central) on the 20 day of March, 2006.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Tennessee Regulatory Authority to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (or the date the party intends to review the filings), to allow time for the Tennessee Regulatory Authority to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Regulatory Authority's ADA Coordinator at 460 James Robertson Parkway, Nashville, TN 37243-0505 and 615/741-2904, extension 251.

For a copy of this notice, contact: Sharla Dillon, Docket Manager, Tennessee Regulatory Authority, 460 James Robertson Parkway, Nashville, TN 37343, (615) 741-2904, extension 136.

Substance of rule amendments and proposed new rules as promulgated pursuant to
2004 Tenn. Pub. Acts 545 and 2005 Tenn. Pub. Acts 173 and 270.

Chapter 1220-4-1
General Public Utility Rules

Amendments

Rule 1220-4-1-.04 Tariff Changes Require 30 Days Notice to the Authority is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) All tariffs, rate schedules or supplements thereto containing any change in rates, tolls, charges or rules and regulations must be filed with the Authority at least thirty (30) days before the effective date of such changes except as hereinafter provided. Upon application and for good cause shown, the Authority may waive the thirty (30) day time limit or any portion thereof.
 - (a) Tariffs, rate schedules or supplements thereto containing any changes in rates, tolls or charges that are valid for one hundred eighty (180) days or less filed by incumbent local exchange telephone companies as defined in Tenn. Code Ann. § 65-4-101(4) shall become effective one (1) business day after filing.
 - (b) Tariffs, rate schedules or supplements thereto containing any changes in rates, tolls or charges that are valid for more than one hundred eighty (180) days, including tariffs extending rates, terms or conditions beyond one hundred and eighty (180) days, filed by incumbent local exchange telephone companies as defined in Tenn. Code Ann. § 65-4-101(4) shall become effective twenty-one (21) business days after filing. Upon application and for good cause shown, the Authority may waive the twenty-one (21) day period or any portion thereof.

Authority: Tenn. Code Ann. § 65-2-102, 65-5-101(c).

Paragraph (4) of rule 1220-4-1-.06 Changes in Tariff is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

- (4) All tariffs and supplements affecting Tennessee intrastate business except those tariffs filed pursuant to 1220-4-1-.04(a) and 1220-4-1-.04(b) shall be filed with the Tennessee Regulatory Authority at least thirty (30) days before the date upon which they are to become effective, unless upon application and for good cause shown the Authority may waive the thirty (30) day time limit or any portion thereof.

Authority: Tenn. Code Ann. § 65-2-102, 65-5-101(c), 65-5-103(a).

Rule 1220-4-1-.07 Special Contracts is amended by deleting the text of the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

- (1) Special contracts between public utilities and certain customers prescribing and providing rates, services and practices not covered by or permitted in the general tariffs, schedules or rules filed by such utilities are subject to supervision, regulation and control by the Authority. A copy of such special agreements shall be filed, subject to review and approval except as provided hereinafter.
 - (a) Rates and terms contained in special contracts negotiated between public utilities that are telecommunications providers and business customers shall be presumed valid and this presumption shall only be set aside by the Authority for the specific reasons set forth in Tenn. Code Ann. § 65-5-101(b).
 - (b) Records of such rates and terms shall be retained by the telecommunications provider for the length of time that such rates and terms apply but shall not be filed with the Authority. Such rates shall become effective upon execution by the parties.

Authority: Tenn. Code Ann. §§ 65-2-102 and 65-5-101(b).

Part 3 of subparagraph (a) of paragraph (2) of rule 1220-4-1-.10 Reports-Uniform Financial Report Forms is amended by deleting the text of part 3 in its entirety and substituting instead the following language so that, as amended, part 3 shall read:

(2) Type of Public Utilities

(a) Telephone Utility Companies

3. Price-regulated carriers operating pursuant to Tenn. Code Ann. § 65-5-109 may be required to file only that financial information or financial reports that are required to be filed with the Federal Communications Commission. Such filing requirements may be satisfied by the carrier by the submission of a letter explicitly identifying a publicly-available government website on which the information is posted. The inspection, control and supervision fee

established in Tenn. Code Ann. § 65-4-301 shall be based on the financial information contained in such federal reports.

Authority: Tenn. Code Ann. §§ 65-2-102, 65-4-401, 65-4-101, 65-4-104, 65-4-111, and 65-5-109.

Chapter 1220-4-2
Regulation for Telephone Companies

Amendments

Parts 1, 2 and 3 of subparagraph (b) of paragraph (2) of rule 1220-4-2-.55 Regulatory Reform is included for public comment to determine if revisions are necessary to ensure that IXCs and CLECs are treated similarly to other carriers.

(2) Intrastate InterLATA services.

(b) Tariff Rules and Regulations.

1. All facility-based providers of intrastate interLATA services shall file tariffs for all intrastate services. Such tariffs shall include a description of every intrastate service offered and terms and conditions for each service. The Authority shall evaluate market share based on data obtained from the Federal Communications Commission and/or other sources as the Authority may require.
2. Each service shall be made available at the rate specified in the tariffs to any customer meeting the terms and conditions for that service.
3. Tariff filings involving new services or rate increases may be suspended by the Authority only upon a showing of good cause.

Additionally, parts 1 and 2 of subparagraph (f) of paragraph (2) of rule 1220-4-2-.55 Regulatory Reform is amended by deleting in its entirety the text of parts 1 and 2 and substituting instead the following language so that, as amended, parts 1 and 2 shall read:

(f) Special Services or Contracts.

1. Rates and terms contained in special contracts negotiated between interexchange carriers and business customers shall be presumed valid and this presumption shall only be set aside by the Authority for the specific reasons set forth in Tenn. Code Ann. § 65-5-101(b).
2. Records of such rates and terms shall be retained by the interexchange carriers for the length of time that such rates and terms apply but shall not be filed with the Authority. Such rates shall become effective upon execution by the parties.

Authority: Tenn. Code Ann. §§ 65-2-102, 65-4-104, 65-4-111, 65-4-201, 65-5-102, 65-5-101(b) and 65-5-103.

New Rule

1220-4-2-.59 Promotional Incentives:

- (1) All telecommunications providers shall be permitted to offer promotional incentives for telecommunications services, including rebates and limited free service offerings, provided that:
 - (a) Such promotions not extend more than six (6) months.
 - (b) Any such free service promotions shall not provide more than one (1) month of free local exchange service in any twelve (12) month period.
 - (c) Any such free service promotion available for the full six (6) month period may not be reinstated for thirty (30) days after expiration of such period.

Authority: Tenn. Code Ann. § 65-37-101.

New Rule

1220-4-2-.60 Price Differences Among Retail Telecommunications Customers:

- (1) Price differences among retail telecommunications customers shall be strictly prohibited to the extent that such differences are attributable to race, creed, color, religion, sex or national origin.
- (2) All other differences in pricing among retail telecommunications customers shall be presumed to be a function of the competitive market. This presumption may be rebutted by evidence of price discrimination as prohibited by Tennessee law.
- (3) In determining whether differences in pricing among retail telecommunications customers constitute price discrimination as prohibited by Tennessee law, all relevant factors shall be considered including, but not limited to, the following:
 - (a) whether customers have been or will be injured as a result of the alleged price differences;
 - (b) whether there is a legitimate business reason to distinguish between the customers who are being treated differently;
 - (c) whether the customers who are being treated differently are similarly situated;
 - (d) whether customers may choose a functionally equivalent service from an alternative service provider at substantially the same price and terms; and
 - (e) whether the TRA has determined previously that existing and potential competition is an effective regulator of the price of the service that is the subject of the complaint.

Authority: Tenn. Code Ann. § 65-37-102.

New Rule

1220-4-2-.61 Bundled Services:

- (1) The Authority shall assert regulatory jurisdiction over retail offerings except retail offerings of combinations or bundles of products or services, whether or not such combinations or bundles of products or services are subject to a tariff or other regulatory filing with the TRA and whether or not comprised of products or services provided by a local exchange carrier alone or with another company. Nothing in this rule shall require any company to engage in joint marketing with another company when it does not choose to do so.
- (2) As part of the terms and conditions for bundles or combinations, telecommunications carriers shall provide customers with the following notice: "This offer contains telecommunications services that are also available separately. Should you desire to purchase only the telecommunications services included in this offer, without additional products or services, you may purchase those telecommunications services individually at prices posted on [company website] or filed with the Tennessee Regulatory Authority."
- (3) Nothing in this rule shall alter the Authority's jurisdiction to hear complaints alleging price discrimination as prohibited by Tennessee law or anticompetitive practices regarding the provision of retail telecommunications services. Claims of anti-competitive practices in any retail telecommunications services market will be evaluated by applying applicable federal or state law and considering all relevant factors including, but not limited to, the following:
 - (a) the geographical and economic extent of commercial demand for functionally-equivalent services;
 - (b) the number and relative longevity of companies providing functionally-equivalent services;
 - (c) the relative gain or loss of revenues attributable to functionally-equivalent services and customers who purchase functionally-equivalent services;
 - (d) the relative increase or decrease in facilities-based investment attributable to providing functionally-equivalent services;
 - (e) the degree to which marketing, pricing and business strategies are utilized to acquire or maintain revenues attributable to functionally-equivalent services and customers who purchase functionally-equivalent services; and
 - (f) the relationship between pricing policies and costs of functionally-equivalent services.
- (4) Nothing in this rule shall alter the Authority's jurisdiction to review price regulation filings or conduct rate of return ratemaking analysis, as applicable, for ILEC telecommunications providers. Revenue for telecommunications services provided in combinations or bundles shall be considered regulated revenue for purposes of price regulation or rate of return rate analysis.
- (5) Nothing in this rule shall affect, alter or be construed to affect or alter the applicability of state or federal antitrust law or federal telecommunications law or the TRA's authority under federal telecommunications laws.

Authority: Tenn. Code Ann. § 65-37-103.

Chapter 1220-4-8
Regulations for Local Telecommunications Providers

Amendments

Subparagraph (b) of paragraph (2) of rule 1220-4-8-.07 Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers Local Service is included for public comment to determine if revisions are necessary to ensure that IXCs and CLECs respectively are treated similarly to other carriers.

(2) Pricing

- (b) Price increases for all local services, that are within the range of prices for a service on file with the Authority: shall become effective thirty (30) days following notification by direct mail to affected customers or by publication of a notice for the increase in a newspaper of general circulation in the affected service area. New price increases that are not within such range shall not become effective until a new informational tariff is filed with the Authority.

Additionally, paragraph (3) of rule 1220-4-8-.07 Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers Local Service is amended by deleting the text of the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

(3) Special Contract Provisions

- (a) Rates and terms contained in special contracts negotiated between competing carriers and business customers shall be presumed valid and this presumption shall only be set aside by the Authority for the specific reasons set forth in Tenn. Code Ann. § 65-5-101(b).
- (b) Records of such rates and terms shall be retained by the competing carriers for the length of time that such rates and terms apply but shall not be filed with the Authority. Such rates shall become effective upon execution by the parties.

Authority: Tenn. Code Ann. §§ 65-2-102, 65-5-101, 65-5-102, 65-5-103, 65-5-104, and Chapter 408 of Public Acts of 1995.

Subparagraph (d) of paragraph (2) of rule 1220-4-8-.09 Consumer Complaints, Anti-Competitive Complaints, and Violation of Applicable State Law and Authority Rules is amended by deleting the text of the subparagraph in its entirety because it did not comply with the new language in Tenn. Code Ann. § 65-37-102. The new language added in 1220-4-2-.60 applies to all telecommunications providers making this section of the rules unnecessary.

Legal/Technical Contact:

J. Richard Collier, General Counsel
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37343
(615) 741-2904, extension 170

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Regulatory Authority.

J. Richard Collier
Richard Collier, General Counsel

Subscribed and sworn to before me this the 10th day of January, 2006.

Lynda Lu Perrin
Notary Public

My commission expires on the 28th day of May, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the 13 day of June, 2006

Riley C. Darnell
Riley C. Darnell
Secretary of State

By: WMD

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