

Rulemaking Hearing Rules  
of the  
Tennessee Regulatory Authority

Chapter 1220-4-2  
Obligations of Resellers and Underlying Carriers of Local Service  
upon the Termination of Service

Chapter 1220-4-2 is amended by adding the following language as a new rule.

1220-4-2-.40

- (1) The purpose of this rule is to protect those customers who are obtaining their local service from resellers from termination of their service without adequate notice. Because of the public safety implications, local service providers shall have additional obligations as listed below.
- (2) This rule applies to any local telecommunications reseller that ceases the provision of any telecommunications service in all or any portion of the State of Tennessee. This rule does not apply to:
  - (a) Cessation of a service when a reseller replaces the terminated service with comparable service without interruption as long as such change is in compliance with Rule 1220-4-2-.56; and
  - (b) Discontinuance of a service that has no subscribers.
- (3) No underlying carrier shall terminate local service to a reseller until the following requirements are met:
  - (a) The underlying carrier shall provide no less than thirty (30) days written notice to the reseller that service will be terminated on a date certain along with the reason(s) for such action. A copy of such written notice shall be timely provided to the Authority.
    1. Notwithstanding the above, where the underlying carrier alleges fraud, abuse, or unreasonable interference with the underlying carrier's network, the underlying carrier is allowed to disconnect the reseller after a two (2) business day notice to the Authority, unless the Authority chairman specifically orders otherwise prior to disconnection. If this emergency provision is invoked, the underlying carrier may be required to comply with the underlying carrier's service continuity plan per section (5).
  - (b) Within ten (10) days of receipt of the underlying carrier's written disconnection notice to the reseller, the reseller shall notify its customers advising that their service will be terminated on a day certain. Such notice shall be no less than fourteen (14) days prior to the date of disconnection. The notice shall advise end-users of the following:

1. Advise its customers of the need to choose another local telecommunications service provider to continue service after a date certain; and
  2. Provide customers any and all relevant information, if available, that may assist the customers in selecting another local telecommunications service provider.
- (c) If the reseller fails to fulfill its obligations under section (3)(b), the Authority will notify the reseller's customers seven (7) days prior to termination of the reseller's local service and recover costs associated with such a notice from the reseller.
- (4) Additional Local Service Obligations for Resellers:
- (a) The reseller must provide the Authority and the underlying carrier any and all relevant information, including but not limited to its customers' names and telephone numbers to ensure that end-user customers will not experience service outage. The reseller must use its best efforts to provide timely and accurate information to the Authority and the underlying carrier.
  - (b) The reseller must file with the Authority a copy of its notice or the text of the voice message to its customers no less than fourteen (14) days prior to the date of disconnection.
  - (c) The reseller shall refund to its customers any credits due as a result of the termination of service within thirty (30) days of the termination of the service. The reseller shall provide information to its customers on how such credits will be determined and distributed.
- (5) Additional Local Service Obligations for Underlying Carriers:
- (a) Within 60 days of the effective date of this rule, each telecommunications service provider having an agreement with a reseller of basic local exchange telecommunications service shall file a tariff which outlines a service continuity plan consistent with this Chapter and, at a minimum, contains the following provisions:
    1. The underlying carrier shall provide basic local exchange service, as defined in Tenn. Code Annotated § 65-5-108, to the customers of the reseller for at least seven (7) days following disconnection of the reseller's service, or until the customer selects another provider of local service, whichever is less. If a customer selects a new service provider, the underlying carrier may pass through to the new provider the charge for such service provided at the

tariffed rate of the underlying carrier. The new provider may pass through this charge to the end-user customer.

2. After the seven day period described in paragraph 1 above, the underlying carrier may terminate service to the customer unless the customer has either transitioned to a new service provider or has placed an order to transition to the underlying carrier.
  - (b) Should the reseller fail or refuse to provide notice to its customers as required in (3) above, the underlying carrier shall provide reasonable assistance to the Authority in notifying the customers of the reseller.
- (6) Violation of this rule, including failure to provide customer notice in (3), shall be subject to the provisions and penalties of Tenn. Code Ann. § 65-4-120.

Authority: Tenn. Code Ann. § 65-2-102, § 65-4-104, § 65-4-123 and § 65-4-125.

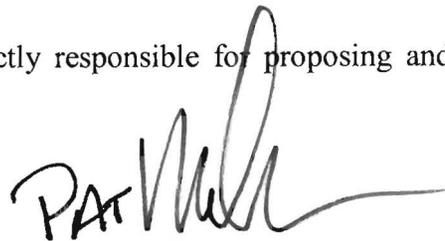
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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:



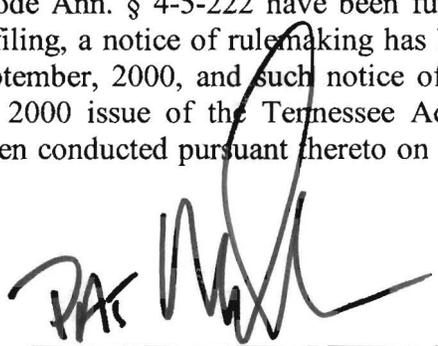
Pat Miller, Chairman

The roll-call vote by the Tennessee Regulatory Authority on these rulemaking hearing rules was as follows:

|                               | Aye           | No            | Abstain       |
|-------------------------------|---------------|---------------|---------------|
| Pat Miller, Chairman          | <u>X</u>      | <u>      </u> | <u>      </u> |
| Deborah Taylor Tate, Director | <u>X</u>      | <u>      </u> | <u>      </u> |
| Sara Kyle, Director           | <u>X</u>      | <u>      </u> | <u>      </u> |
| Ron Jones, Director           | <u>      </u> | <u>X</u>      | <u>      </u> |

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 27th day of September, 2004.

Further, I certify that the provisions of Tenn. Code Ann. § 4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking has been filed in the Department of State on the 29th day of September, 2000, and such notice of rulemaking hearing having been published in the October, 2000 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 16th day of November, 2000.

  
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 Pat Miller, Chairman

Subscribed and sworn to before me this the 6<sup>th</sup> day of July, 2005.

  
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 Notary Public

My commission expires on the 28<sup>th</sup> day of May, 2006.

All rulemaking hearing rules provided for herein have been examined by the Attorney General & Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5, Section 211.

  
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 Paul G. Summers  
 Attorney General & Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 5 day of Dec, 2006, and will become effective on the 18 day of Feb, 2007.

2007

Riley C. Darnell

Riley C. Darnell  
Secretary of State

By: [Signature]

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PUBLICATIONS

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE: )  
 )  
RULEMAKING AMENDMENTS OF REGULATIONS ) DOCKET NO.  
FOR TELEPHONE SERVICE PROVIDERS ) 00-00873

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RESPONSE TO COMMENTS

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**Background**

A Notice of Rulemaking to amend TRA Rules Chapter 1220-4-2 was filed with the Secretary of State on September 29, 2000. The proposed rulemaking sought to amend the chapter by deleting Rules 1220-4-2-.01 through .42 in their entirety and substituting new rules 1220-4-2-.01 through .22, resulting in a complete revision of the TRA's telephone service standard rules. After the rulemaking hearing on November 16, 2000 and extended comment period, the Authority held three workshops on January 16, January 30 and February 20, 2001. During a regularly scheduled Authority Conference held on June 18, 2002, the Directors considered the proposed rules,<sup>1</sup> but did not make a final decision.

On November 10, 2003 during a regularly scheduled Authority Conference, Chairman Deborah Taylor Tate requested that proposed Rule 1220-4-2-.07, Termination of Local Service to a Reseller or Cessation of Service by a Local Telecommunications Service Provider, be examined separate from the rest of the proposed rules in this docket. The Staff was directed to review and further revise this particular subsection of the proposed rules for future consideration. Staff prepared a revised rule subsection and on January 16, 2004, a Notice of Filing was issued requesting all interested parties to file written comments no later than January 30, 2004 regarding the proposed amended Rule 1220-4-2.07. On April 8, 2004, a workshop was conducted by the Authority staff to discuss the proposed amended Rule 1220-4-2-.07.<sup>2</sup>

The proposed amended Rule 1220-4-2-.07 was considered during a regularly scheduled Authority Conference held on September 13, 2004. During the Conference, Director Ron Jones proposed amendments to the proposed Rule. Interested Parties were given an opportunity to comment regarding the amendments submitted by Director Jones<sup>3</sup> and consideration was rescheduled for

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<sup>1</sup> The original proposed rules were re-drafted and filed on August 16, 2001 (1<sup>st</sup> re-draft). On May 2, 2002 the 2<sup>nd</sup> re-draft was filed and oral comments were heard during the May 7, 2002 Authority Conference. A final re-draft was filed on June 12, 2002 (3<sup>rd</sup> re-draft). The 3<sup>rd</sup> re-draft was considered during the June 18, 2002 Authority Conference, however no decision was made and the rulemaking was deferred to a later Authority Conference (no specific date).

<sup>2</sup> A Notice of Workshop was issued on March 31, 2004.

<sup>3</sup> A Notice of Filing Comments was issued on September 14, 2004 requesting comments to be filed no later than September 20, 2004.

the following Authority Conference. During the September 27, 2004 Authority Conference, the Directors approved the Rule as submitted on September 13, 2004.<sup>4</sup>

During preparation of the approved Rule 1220-4-2-.07 for review by the Attorney General, it was discovered that during the November 10, 2003 Authority Conference there was no discussion as to the placement of this rule within the current set of rules. Under its current number, the proposed rule would overlap or perhaps supercede the current existing rule, 1220-4-2-.07 Meter Reading Equipment, without the current rule being expressly deleted or moved to another subsection. Therefore, during the regularly scheduled Authority Conference held on June 27, 2005, the Directors assigned a new rule subsection number to the proposed amended rule by designating the rule as subsection .40.

### **Comments and Responses**

BellSouth Telecommunications, Inc., Citizens Companies and United Telephone-Southeast, Inc. filed comments in response to the January 16, 2004 Notice of Filing. All commentors objected that the focus of the current proposed rule appeared to shift the burden of customer notification away from the reseller when it exits the market and onto the underlying carrier. The commentors also suggested the Authority conduct a workshop with interested parties to see if an agreement could be reached on the rule. A workshop was scheduled and noticed for April 8, 2004.

BellSouth, Sprint, MCI, AT&T and Frontier attended the workshop held on April 8, 2004. The following comments and responses are a result of this workshop.

- (1) The participants state that the problem of reseller abandonment is a local issue and the proposed rule should strictly address it as a local issue.

Authority response - Agree to limit rule scope to local service. (See 1220-4-2-.40)

- (2) The participants state that many times reseller payment issues are resolved after the 30 day notice is issued but before the actual disconnection is effectuated. Therefore, the parties' request flexibility in dealing with reseller bad debt and not to be required to provide the Authority with notice of pending disconnection at the same time the reseller is notified.

Authority response - Agree to require timely notice be given to the Authority rather than simultaneous notice of pending reseller disconnection by an underlying carrier. (See 1220-4-2-.40(3)(a))

- (3) The participants state that providers that serve as underlying carriers believe the obligation of customer notification could raise anti-competitive complaints that underlying carriers are contacting their competitor's customer and offering service. Recovery of the cost of such notice was also raised.

Authority response - The primary notice requirement remains squarely with the reseller. However, in rare cases when the reseller fails to do so, the responsibility defaults to the Authority to notify reseller customers of pending disconnection due to abandonment of service. Therefore, the revised language places a responsibility for the underlying carrier to provide reasonable assistance to the Authority when notice is required.

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<sup>4</sup> The proposed amendments presented by Director Jones were not adopted due to the lack of a second on the motion, and the rule as proposed on September 13, 2004 passed by a vote of 3 to 1, Director Jones dissenting.

- (4) BellSouth and Sprint object to providing back-up local service to the customers of resellers that abandons service, and proposed to limit the back-up service to a soft dial tone where available.

Authority response – Soft dial tone is not available statewide and therefore would not provide a comprehensive safety net, however the Authority agreed to reduce the back-up service requirement from 14 days to 7 days. This was accepted by the industry.

The proposed rule as modified was considered during a regularly scheduled Authority Conference held on September 13, 2004. During the Conference, Director Jones recommended amendments to the proposed rule and as a result the Chairman, without objections, held in abeyance further deliberations of the Directors until the public had an opportunity to comment. September 20, 2004 was the deadline for filing comments regarding the amendments proposed by Director Jones. Sprint and BellSouth filed written comments on September 17 and 20, 2004 respectively. Sprint additionally filed late written comments on September 23, 2004. The following is a summary of the comments and response.

- (1) Director Jones suggested changing 1220-4-3-.07(3)(a) to require that the Authority receive the same thirty day notice as the reseller when an underlying carrier plans to disconnect a reseller for non-pay.

BellSouth opposes the change and stated that most payment issues between the underlying carrier and the resellers are addressed after the thirty day notice is provided but before actual disconnection is effectuated.

Authority response - The proposed rule was initially amended to require a copy of such written notice be timely provided to the Authority in response to earlier comments from BellSouth, Citizens and UTSE. The timely notice timeframe would not harm the Authority's ability to monitor and intervene, if necessary, in the disconnection process.

- (2) Director Jones suggested changing the "service continuity tariff filing trigger" to occur if an obligation to resell exists (1220-4-2-.07(5)(a)). Such obligation language would mandate all ILECs, such as Peoples and Crockett Telephone Companies, to file tariffs with the Authority, even though it may be years before a reseller makes a request to resell service in their territory.

No comments regarding this issue were filed by BellSouth or Sprint.

Authority response - The proposed language more narrowly defines when underlying carriers (ILECs) must file such tariffs. The limited requirement to file such tariffs would conserve the resources of both non-affected ILECs and the Authority.

- (3) Director Jones suggested deleting in its entirety 1220-4-2-.07(a)(2). This would delete the specific limit of seven days emergency local service the underlying carrier is required to provide if the disconnected resellers' end user fails to select another local carrier before the reseller is disconnected.

BellSouth and Sprint oppose the change suggested by Director Jones. The specific seven day language is important to BellSouth and Sprint, as indicated in their written comments.

Authority response – If 1220-4-2-.07(a)(2) is deleted, the controlling language would fall to the requirement found in 1220-4-2-.07(a)(1), where the underlying carrier would

provide such service for “at least seven (7) days . . . or until the customer selects another provider of local service which ever is less.”

**Conclusion**

The Authority worked on modifications to the proposed rule that would satisfy industry concerns without compromising the intent of the proposed rule requiring customer notice and the provision of a safety net of local service provided by the underlying facility-based carrier for a precise period of time when a reseller abandons service.

This proposed rule is a significant step by the Authority to ensure that customers have the right to receive notice before losing local dial tone. The proposed rule also gives the Authority the regulatory teeth to enforce such notice and a contingency plan to ensure that a safety net of local telephone service is available to all consumers in the event that a reseller skirts its responsibility. Finally, the proposed rule (as modified) provides an opportunity for compensation to the underlying carriers by passing through the charge to the customer’s new provider for any back-up service provided.

The proposed rule, with modifications, as published in the Tennessee Administrative Register, was approved by the TRA on September 27, 2004.