

## 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 T.C.A. §§ 4-5-202 and 65-2-102. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 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 8<sup>th</sup> day of September 2008.

An earlier version of Chapter 1220-04-14 was filed with the Secretary of State on August 29, 2006 and published in the Tennessee Administrative Register of September, 2006. After a rulemaking hearing was held on October 16, 2006, and all public comments were considered, substantial modifications were made to that filing. Therefore, the following Proposed Rule is intended to replace the August 29, 2006 version, and it is being republished and reheard in order to provide sufficient due process.

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 or 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 138.

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.

### Proposed Rule of the Tennessee Regulatory Authority

#### Chapter 1220-04-14 Telecommunications Rule Governing the Operations and Funding Mechanism for the Tennessee Relay Service

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#### 1220-04-14-.01 Definitions

- (1) "Authority" means the Tennessee Regulatory Authority.
- (2) "Basic relay" means the traditional form of relay consisting of one TTY user and one voice user.

- (3) "CapTel" means a service that utilizes captioned telephone technology to assist persons with a communication disability in their use of the telephone network.
- (4) "Communication disability" means a condition of hearing impairment or speech impairment as defined in Title IV, Section 401, Americans with Disabilities Act of 1990.
- (5) "Contributing Service Provider" means any entity that offers a service that includes real-time voice communications that originate and terminate within the state. This definition shall include wireless and IP based providers that process calls originating and terminating within the state.
- (6) "State" means the State of Tennessee.
- (7) "Tennessee Relay Service (TRS)" means the service through which a person having a communication disability, through the use of specialized telecommunications equipment, sends and receives messages by way of voice communication to and from a person without such disability whose telephone is not equipped with specialized telecommunications equipment. TRS includes services that enable two-way communication between an individual who uses a text telephone or other non-voice terminal device and an individual who does not use such a device. TRS shall include basic relay and CapTel services.
- (8) "Gross Receipts" means revenue, for services provided subject to Tennessee sales and use tax.

Authority: T.C.A. § 65-2-102, § 65-4-123 & § 65-5-107

#### 1220-04-14-.02 Scope and Purpose of Chapter

- (1) This Chapter provides for the operation and funding of the Tennessee Relay Service. As stated by the Tennessee General Assembly in T.C.A. § 65-5-107 *et seq.*, it is the public policy of the State that all citizens have access to affordable residential basic local telecommunications service, referred to as "universal service." Successfully accomplishing universal service requires the establishment of a telecommunications relay service that will provide citizens with a communications disability the ability to access and utilize the public telecommunications network.

Authority: T.C.A. § 65-2-102, § 65-4-123 & § 65-5-107

#### 1220-04-14-.03 TRS Fund Administrator

- (1) The Authority may designate a TRS Fund Administrator, who shall administer the collection and disbursement of funds for the TRS in accordance with Generally Accepted Accounting Principles and state requirements.
- (2) Funds collected to support the TRS shall be deposited in the TRS Fund of the Authority. Any excess funds collected over the actual expense shall be deposited in TRS Reserve Fund. The TRS Reserve Fund shall be capped at 50% of the previous year's TRS actual operating expenses.
- (3) Funds collected to support the TRS may be used to cover administrative expenses incurred in the collection and disbursement of TRS funds.
- (4) The TRS Fund Administrator shall issue an annual financial report of the TRS fund in February

of each year reflecting the amount of monies collected and dispersed as well as the portion of the fund used to support the administration of the program. The annual financial report will be posted on the Authority's website for public review.

Authority: T.C.A. § 65-2-102, § 65-4-123 & § 65-5-107

1220-04-14-.04 TRS Operation Administrator

- (1) The Authority shall appoint, consistent with the requirements for contracts for state services (T.C.A. § 12-4-109), and contract with a qualified person or persons to operate the Tennessee Relay Service (TRS Operation Administrator) in accordance with state and federal law.
- (2) The TRS Operation Administrator shall not be an employee or officer of the state.
- (3) The appointment, consistent with the requirements for contracts for state services (T.C.A. § 12-4-109) and contract for the TRS Operation Administrator shall be for fixed terms with the provision that the Authority may renew the terms of appointment and contract.
- (4) The TRS contract shall include a consumer education and outreach component to inform and educate the public about the availability of relay services.
- (5) The TRS Operation Administrator shall establish a TRS advisory council made up of users of relay services representing all regions of the state who will provide the administrator with feedback on service quality and feature offerings. This council shall consist of no fewer than five (5) individual who reside in East, Middle and West Tennessee with no more than two (2) residing in any one grand division of the State.
- (6) The TRS Operation Administrator shall provide reports timely to the Authority as requested or as required in the TRS contract.
- (7) The Authority may audit, at its own expense, the records of the TRS Operation Administrator.

Authority: T.C.A. § 65-2-102, § 65-4-123 & § 65-5-107

1220-04-14-.05 TRS Funding Mechanism

- (1) All Contributing Service Providers shall contribute toward the cost of supporting the TRS through an annual assessment, determined by the TRS Fund Administrator.
- (2) The amount assessed to each Contributing Service Provider, for the purpose of funding the TRS, shall include an allocation of projected total TRS costs for the upcoming year and a true-up of actual costs for the preceding year to the amount of funding collected for the same time period. This assessment shall be based upon the prorated share of total gross receipts of all Contributing Service Providers as reported on the TRS Assessment Form provided by and filed with the Authority.
  - (a) No later than May 1 of each year, all Contributing Service Providers shall submit to the TRS Fund Administrator, and the Authority, data showing the total gross receipts for the twelve (12) months ending December 31 of the preceding year generated from the real time provision of voice communications originating and terminating in Tennessee, along with a sworn affidavit from a company executive verifying the accuracy of the data.

- (b) No later than September 1 each year, the TRS Operation Administrator shall submit to the TRS Fund Administrator, and the Authority, a statement of actual costs, by month, for the twelve (12) months ending June 30 of the current and a projection of the cost to operate the TRS for the following calendar year.
  - (c) No later than November 1 of each year, the TRS Fund Administrator shall calculate the amount and render assessments to all Contributing Service Providers.
  - (d) Contributing Service Providers shall submit payment to the TRS Fund Administrator for TRS assessment, calculated in (c) above, no later than December 15 of each year.
  - (e) Contributing Service Providers that have less than five hundred thousand dollars (\$500,000) of Tennessee gross receipts, in aggregate, shall not be assessed a fee to support the TRS but are still required to file with the TRS Fund Administrator, and the Authority, the annual data specified in 1220-04-14-.05(2)(a). For the purpose of meeting this de minimis requirement, multiple companies owned by a single parent company shall be considered a single entity.
  - (f) Contributing Service Providers shall be assessed a late fee of five percent (5%) per month of the TRS assessed amount for failing to comply with Rule 1220-04-14-.05(2) (d).
  - (g) If, at any time, it becomes apparent that actual TRS costs will exceed the amount collected, thereby resulting in a shortage of available funds, the TRS Fund Administrator may petition the Authority to impose an emergency assessment to cover the expected shortfall.
- (3) Contributing Service Providers shall be authorized to recover those amounts collected for funding the TRS. The charge may be itemized on each telephone account, in which case the authorized charge shall be calculated by the Authority and shall be listed by the carrier as the "Tennessee Relay Service Fund" on the end user's bill. Each Contributing Service Provider shall maintain a record of the monthly itemized charge imposed on and collected from each customer for a period of three (3) years.

Authority: T.C.A. § 65-2-102, § 65-4-123 & § 65-5-107

#### 1220-04-14-.06 Enforcement Provisions

- (1) The Authority may, at its own expense, audit the records of Contributing Service Providers or request such information as to ensure that such charges to customers are collected in accordance with this chapter.
- (2) The Authority may order the investigation of a Contributing Service Provider to determine compliance with this chapter. If such investigation reveals a possible violation of state law or this Chapter, the Authority may issue a show cause order with respect to such acts pursuant to T.C.A. Section 65-2-106.

Authority: T.C.A. § 65-2-102, § 65-4-123 & § 65-5-107

The notice of rulemaking set out herein was properly filed in the Department of State on the 27th day of June, 2008. (FS 06-30-08; DBID 867)