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JUN 6 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of the Subscriber Changes)
Provisions of the Telecommunications Act)
of 1996)
)
Southwestern Bell Telephone Company and)
Southwestern Bell Long Distance)
Petition for Waiver)

CC Docket No. 94-129

EMERGENCY PETITION FOR WAIVER

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, requests a limited waiver of the Commission's carrier-change authorization and verification rules, 47 C.F.R. §§ 64.1100 – 64.1190, where necessary to enable certain local exchange residential and business subscribers of OpTel, Inc., TVMAX Telecommunications, Inc., and Optel Telecom, Inc. (collectively "Optel") in the greater metropolitan area of Dallas-Fort Worth, Texas, to be transferred to SWBT without prior customer approval for such transfers. SWBT respectfully request expedited treatment of this Petition to ensure the seamless transfer of Optel's customers to SWBT.

I. Background

SWBT is the incumbent local exchange carrier operating in the states of Arkansas, Kansas, Missouri, Oklahoma and Texas. In Texas, Optel provides local exchange, long distance and other telecommunications services primarily as a facilities-based carrier.

On October 28, 1999, Optel filed petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (Bankruptcy

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Court). Optel's Chapter 11 cases have been procedurally consolidated with the Chapter 11 cases of certain of its affiliates and are pending in the United States District Court for the District of Delaware (Court). The Bankruptcy Court has given Optel authority to discontinue service. Optel and SWBT have entered into an Agreement, conditioned on FCC approval of this Petition, pursuant to which approximately 4,000 of Optel's local exchange customers in certain portions of the greater metropolitan area of Dallas-Fort Worth, Texas, would be transferred to SWBT if they do not make elections to go to other carriers. Optel has obtained an order of the Court approving Optel's right to consummate the transactions contemplated by this Agreement.

Optel intends to exit the local and long distance market in Texas as soon as practical. Optel and SWBT would like to give customers as much advance notice as possible to enable them to make informed and timely decisions regarding their new local exchange provider. Optel and SWBT, by a joint customer notice, intend to notify affected customers of the transfer and the scheduled transfer date at least 30 days prior to the scheduled transfer date. The notice will explain that affected customers may select an alternative local exchange provider, including SWBT, at any time prior to the scheduled transfer date, but if they do not make alternative arrangements, their local exchange telephone service automatically will be transferred to SWBT to avoid any interruption in service.¹ The notice also will explain that customers receiving local toll and/or long distance services from Optel who have not selected a local service provider by the scheduled transfer date will have to contact SWBT to select a long distance carrier. These customers will not receive long distance service until they select a carrier. Further, the notice will explain that customers will not be charged a new connection fee if they transfer their service to SWBT, but may incur such a charge if they transfer their service to another provider. In

¹ OpTel will provide SWBT with the affected customers' service records to enable SWBT to effectuate the transfers.

addition, the notice will include a toll-free number to address any questions or concerns regarding a customer's service with Optel and/or the transfer to SWBT, and will include information about SWBT's rates, terms and conditions of service. Attached as Exhibit 1 is a copy of the pre-transfer notification.

Once the transfer is complete, SWBT will send a post-transfer notice to the transferred customers reiterating the information contained in the pre-transfer notice. Attached as Exhibit 2 is SWBT's post-transfer notice. Specifically, the post-transfer notice will (1) inform subscribers that their local exchange service has been switched to SWBT; (2) inform subscribers that they have a right to switch carriers at any time; (3) provide SWBT's rates, terms and conditions of service; and (4) include a toll-free number should subscribers need further assistance regarding the transfer or services.

II. Discussion

Section 1.3 of the Commission's rules authorizes the agency to waive any Commission rule if good cause is shown.² Pursuant to Commission rules 64.1100 *et seq.*,³ a change in a subscriber's selection of a provider of telecommunications service shall not be made except in conformance with authorization and verification procedures prescribed by the Commission.⁴ Under the agreement between Optel and SWBT, Optel customers who do not make alternative arrangements for local exchange service by the scheduled transfer date set forth in the notice will be defaulted to SWBT. SWBT therefore seeks a limited waiver of Commission rules 64.1100 *et*

² 47 C.F.R. § 1.3.

³ 47 C.F.R. §§ 64.1100 *et seq.*

⁴ *Id.* § 64.1100(a).

seq. to allow those Optel customers who fail to make timely alternative arrangements for local exchange service to be transferred to SWBT without their prior approval.

It is well settled that the Commission has authority to grant a request for waiver of its rules for good cause shown.⁵ There is good cause for waiver of Sections 64.1100 *et seq.* First, grant of the waiver is necessary to ensure the seamless transition of the affected customers from Optel to SWBT, thereby avoiding unnecessary disruptions in local exchange service. SWBT cannot determine prior to the transfer which customers will not make alternative arrangements by the transfer date specified in the pre-transfer notification letter. In light of the significant number of customers involved, it would be impossible for SWBT to contact each customer and obtain and verify their approval prior to the scheduled transfer date.

Second, the affected customers will receive adequate pre-transfer notification of the change and their rights and options and will receive post-transfer notification of the same. Thus, the overriding policy goals of the Commission's carrier-change rules will be fully addressed. Third, the Commission has granted waiver requests by other carriers in circumstances similar to these.⁶

III. CONCLUSION

For the foregoing reasons, SWBT requests that the Commission expeditiously grant its request for a limited waiver of the Commission's carrier-change authorization and verification rules. Such a grant will allow the seamless transfer of Optel's affected customers to SWBT.

⁵ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁶ *Bell Atlantic Communications, Inc.'s Petition for Waiver*, DA 00-2816 (rel. Dec. 12, 2000); *McLeod/USA Petition for Waiver*, DA 00-2151 (rel. Sept. 21, 2000).

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE
COMPANY

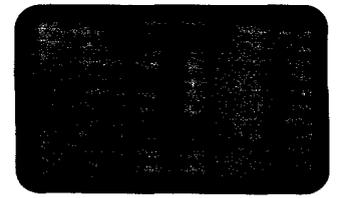
By:  _____

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Its Attorneys

June 6, 2001



URGENT!

NOTICE OF TRANSFER OF TELEPHONE SERVICE

Southwestern Bell Telephone Company ("SWBT") has acquired OpTel's rights to provide your local telephone service and can assist you with your carrier selection for your long distance services.

You have the right to transfer your OpTel telephone services to the alternative service provider of your choice. However, you must make this selection by _____ (the "Selection Date").

Pending FCC approval, if you have not transferred your service to either SWBT or another provider by the Selection Date, your local telephone service will be transferred automatically to SWBT within the following twenty (20) days (the "Transfer Period").

After the Transfer Period, OpTel will no longer be providing your local and long distance service.

Call SWBT immediately to select new service packages and insure a smooth transition!

Contact Numbers

Southwestern Bell: 1-877-253-6250 for residential service
Hours: M-F 8:00 a.m.-7:00 p.m., Sat. 9:00 a.m.-6:00 p.m.

1-888-481-0367 for business service
Hours: M-F 8:00 a.m.-6:00 p.m.

OpTel: 1-800-487-3320

OpTel has appreciated the opportunity to be your telephone service provider.

Please see the information included in this mailing for important details.



VIDEO • VOICE • DATA

[SWBT LOGO]

May __, 2001

NOTICE OF TRANSFER OF TELEPHONE SERVICE

Dear OpTel Telephone Customer:

OpTel and Southwestern Bell Telephone Company ("SWBT") have entered into an agreement whereby SWBT has acquired OpTel's rights to provide your local telephone service. Upon receipt of this letter you may transfer your local telephone service to SWBT or any other carrier of your choice. Pending FCC approval, if you have not transferred your service to SWBT or another carrier by _____, 2001 (the "Selection Date") **[30 DAYS AFTER THE DATE OF THIS LETTER]**, then within the following twenty (20) day period (the "Transfer Period"), your telephone service will be transferred to SWBT as outlined below in accordance with applicable rules of the Public Utility Commission of Texas ("TPUC"). After the Transfer Period OpTel will no longer provide local or long distance telephone service to the property in which you reside.

You have a choice in selecting your telephone service provider.

1) If You Select Southwestern Bell for Local Service by the Selection Date: Please contact SWBT at 1-877 253-6250 for residential service, or at 1-888 481-0367 for business service as soon as possible. SWBT will provide you with the services you request, and will make long distance service available to you from the carrier of your choice. You may be able to retain your existing OpTel phone number with SWBT service. Your customer service representative will confirm your number retention when you call for service. SWBT will not charge its customary new connection fee pursuant to TPUC Substantive Rule 26.130k.

2) If You Select Local Service from Another Provider before the Selection Date: Please be aware that if you transfer your service to a provider other than SWBT, you may incur a new connection charge, and you must make arrangements with that service provider to transfer your service prior to the Selection Date.

- a. If you will be keeping your phone # -- If you make arrangements for new service from a service provider other than SWBT and you will be keeping your existing telephone number, then your new provider will contact OpTel to arrange for the transfer of your service -- you will not need to do anything further.
- b. If you will not be keeping your phone # -- If you make arrangements for new service from a service provider other than SWBT but you will not be keeping your existing telephone number, then please contact OpTel at 1-800-487-3320 to schedule the disconnection of your existing telephone service and the discontinuation of further billing.

3. If You Do Not Select A Local Service Provider by the Selection Date: If you have not transferred service to either SWBT or another provider by the Selection Date, your local telephone service will be automatically transferred to SWBT during the Transfer Period, in accordance with the applicable rules of the TPUC. Services will be provided to you as follows:

- a. Local Services -- SWBT will provide approximately the same local services, including local toll calls, as you were receiving with OpTel, at SWBT's approved rate structure.
- b. Long Distance Services
 - 1) OpTel Long Distance Customers -- If you used OpTel for long distance, please call SWBT at the phone numbers listed in Part 1 above to select the long distance carrier of your choice, after the transfer of your local service. You will not have long distance service until you select a carrier.
 - 2) Long Distance Customer of Another Carrier -- If you used a long distance carrier other than OpTel, you will receive the same service from the same carrier.
- c. Service Adjustments -- You may make adjustments and changes to your service from SWBT at any time by calling the 800 numbers listed above for business and residential customers.

After the payment of your final bill to OpTel, any deposits or credits that may be due to you from OpTel will be sent to you within 30 days following the discontinuation of your telephone service. OpTel will no longer make any new changes to your OpTel phone service.

OpTel appreciates the opportunity to have been your telephone service provider. SWBT is eagerly looking forward to serving your communications needs! If you have any questions regarding your OpTel telephone service or the transfer of your service, please direct any questions you may have to OpTel at 1-800-487-3320. If you have any questions about your future telephone services or features from SWBT, please contact SWBT at 1-877 253-6250 for residential service, or at 1-888 481-0367 for business service.

Sincerely,

OpTel

SWBT

Nota: Una version de esta carta esta disponible en espanol a sus ordenes llamando a 800- xxx-xxxx.

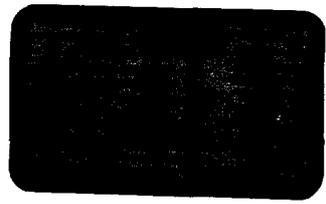
SWBT'S TERMS AND CONDITIONS OF LOCAL SERVICE

As a service to our customers, and in compliance with requirements of the Public Utility Commission of Texas, SWBT wants to provide you with the following information concerning the terms and conditions of service.

- Depending on your location, your residential local telephone service will be billed at a monthly rate between \$8.33 - \$11.23 for Southwestern Bell's touch-tone one-party flat rate service. Touch-tone Lifeline service is billed at a rate of \$2.68 - \$4.23. Depending on your location, your business local telephone service will be billed at a monthly rate between \$26.55-\$29.45 for Southwestern Bell's touch-tone one-party flat rate service.*
- If you decide to order any additional services, a full description of each product or service you order will be identified on your bill. For additional information, you may reference the EasyOptions section of your Southwestern Bell Telephone directory or visit our Web site at www.swbell.com.
- Charges for late payment and returned checks – For residential customers, a late payment charge of \$2.95 is applicable on all residence bills if charges greater than \$10.00 are carried over to the next bill, as is referenced in the Payment Information section of the telephone bill. For business customers, a late payment charge of 5% is applicable if payment is not made by the next bill date as referenced in the Payment Information section of the telephone bill. There is a \$25.00 charge for returned checks. If late payment or returned check charges are applicable, they can be found in the Other Charges section and Monthly Statement section of the telephone bill.
- Deposits and advance payments – If a deposit or advance payment is later required to continue local telephone service with Southwestern Bell, the advance payment will appear in the Monthly Statement section of your telephone bill and the deposit will appear in the Payment Information section of your telephone bill. Information on interest accrual and refund of deposit can be found in the "Your Rights as a Customer" section of the Southwestern Bell Telephone directory.
- Telephone number assignment changes - Your correct telephone number will be reflected on your telephone bill.
- You may terminate your service at any time, subject to a minimum one-month's billing as set forth in our tariffs.
- Applicable minimum contract service terms and early termination fees – If you have signed a contract for a minimum term, you should have received a contract with the terms, conditions and applicable termination fees. If you have not received this contract, please call us at 800-499-7928.

* Rates for Southwestern Bell's touch-tone, 1-party flat-rate line and for Southwestern Bell's touch-tone, Lifeline service vary by location.

SOUTHWESTERN BELL LOGO HERE



DATE

Dear Customer,

On _____ your local telephone service and optional calling features were transferred from OPTEL to Southwestern Bell Telephone Company. The products and services connected, reflect what Optel showed on your records at the time of the transfer to Southwestern Bell. It is our understanding that OPTEL informed you of their decision to stop providing local telephone service in Texas, and advised that you would need to select a new telephone service provider prior to a specified date. As approved by the Public Utility Commission of Texas and the Federal Communications Commission, the transfer to Southwestern Bell occurred because no selection was made prior to the specified date.

Although Southwestern Bell is pleased to become your new local telephone service provider, you do have a choice in local telephone service providers. You can choose either to remain with Southwestern Bell or select any other telecommunications utility that offers local telephone service in your area. If you do decide to select another provider, you will need to contact the other provider to request the change.

As a service to our customers, and in compliance with requirements of the Public Utility Commission of Texas, we want to provide you with the following information concerning Southwestern Bell's terms and conditions of service.

TERMS AND CONDITIONS OF SERVICE

- Basic local telephone service is billed at the monthly rate of *\$8.23 - \$11.23 for Southwestern Bell's touch-tone one-party flat rate service. Touch-tone Lifeline service is billed at a rate of *\$2.68 - \$4.23.
- Services other than the basic line are optional, a full description of each optional product or service will be identified on your monthly bill. The rates Southwestern Bell charges for optional services and features may be more or less than the rates that you paid to Optel for the same services.
- Any tariffed switching charges incurred as a result of transferring your service to Southwestern Bell will be billed directly to Optel.
- For additional information, or if you wish to make changes to your service you may reference the EasyOptions section of your Southwestern Bell Telephone directory or visit our Web site at www.swbell.com or call our office at 800 464-7928.
- Charges for late payment and returned checks - A late payment charge of 5% is applicable and is referenced in the Payment Information section of the telephone bill. There is a \$25.00 charge for returned checks. If late payment or returned check charges are applicable, they can be found in the Other Charges section and Monthly Statement section of the telephone bill.

- Deposits and advance payments – If a deposit or advance payment is later required to continue local telephone service with Southwestern Bell, the advance payment will appear in the Monthly Statement section of your telephone bill and the deposit will appear in the Payment Information section of your telephone bill. Information on interest accrual and refund of deposit can be found in the “Your Rights as a Customer” section of the Southwestern Bell Telephone directory.
- Telephone number assignment changes - Your correct telephone number will be reflected on your telephone bill.
- You may terminate your service at any time, subject to a minimum one-month’s billing as set forth in our tariffs.

Southwestern Bell lists **Your Rights As A Customer** in the Help Guide of your Southwestern Bell Telephone directory. If you do not receive a copy of this telephone directory within the next 10 days, please call 800-792-2665. You will also find other helpful information in this guide and/or by using our Web site at www.swbell.com.

We value and appreciate your business. We know you will be very satisfied with service from Southwestern Bell. If we can be of further assistance, please contact us at 800-464-7928.

Sincerely,

Your Service Representative

Note:

A Spanish language version of this letter can be obtained upon request by calling 800-464-7928.

Nota:

Una version de esta carta esta disponible en espanol a sus ordenes llamando a 800-464-7928.