

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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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 )  
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 Houston, 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 (the "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 (the “Court”). The Bankruptcy Court has given OpTel authority to discontinue service.

On July 12, 2001 OpTel and SWBT entered into an Agreement (Initial Agreement) pursuant to which approximately 4000 of OpTel’s local exchange customers in Houston, Texas would be transferred to SWBT. SWBT filed a self-certification letter in compliance with the FCC’s Fourth Report and Order on June 26, 2001. Approximately 3000 OpTel customers were not included in this transaction because SWBT could not guarantee that it would have the facilities necessary to serve these customers prior to OpTel’s exit from the Houston market. These customers, however, were notified in early June of OpTel’s intent to discontinue providing their local and long distance services, effective August 8, 2001. See Exhibit 1. The notice advised these customers to select another provider for their local and long distance service and that if they did not select another provider, their telephone service would be transferred to SWBT.<sup>1</sup> The notice also advised that OpTel would be responsible for any switchover or new service fees. Further, the notice provided a toll-free number for any questions.

Subsequent to this notice, SWBT resolved its facilities issues and agreed to transfer the additional 3000 OpTel subscribers to SWBT for local telephone service. OpTel intends to exit the Houston market as soon as possible, but no later than September 11, 2001, and has arranged

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<sup>1</sup> While OpTel may have intended to default to SWBT those customers that did not select an alternative provider, SWBT, at this juncture, had not agreed to transfer these subscribers to its service. In response to a request from the Public Utility Commission of Texas, SWBT subsequently agreed to transfer these subscribers to its service.

to transfer these subscribers to SWBT beginning on August 15, 2001.<sup>2</sup> Accordingly, SWBT, as the acquiring carrier, does not have sufficient time to comply with the 30-day notification and self-certification requirements set forth in the FCC's Fourth Report and Order. Accordingly, SWBT seeks a waiver of the Commission's carrier change authorization and verification requirements.

Once the transfer is complete, SWBT will send a post-transfer notice to the transferred customers. 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; (4) explain that SWBT will work with subscribers to attempt to resolve any outstanding complaints regarding their service with OpTel; and (5) 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.<sup>3</sup> Pursuant to Commission rules 64.1100 *et seq.*,<sup>4</sup> 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.<sup>5</sup>

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<sup>2</sup> SWBT would like to begin transitioning these customers as early as August 15, 2001 to ensure that all affected customers are transferred prior to Optel's exit from the Houston market on September 11, 2001.

<sup>3</sup> 47 C.F.R. § 1.3.

<sup>4</sup> 47 C.F.R. §§ 64.1100 *et seq.*

<sup>5</sup> *Id.* § 64.1100(a).

OpTel customers that do not make alternative arrangements for local exchange service by August 8, 2001 will be defaulted to SWBT. SWBT therefore seeks a limited waiver of Commission rules 64.1100 *et seq.* to allow those OpTel customers that 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.<sup>6</sup> 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, in addition to the notice of discontinuation provided by OpTel, the affected customers will receive post-transfer notification of the change and their rights and options. 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.<sup>7</sup>

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<sup>6</sup> *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>7</sup> *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).

**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.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE  
COMPANY

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August 9, 2001



June 8, 2001

## URGENT!

### NOTICE OF DISCONTINUATION OF TELEPHONE SERVICE

Dear OpTel Telephone Customer:

Please be advised that OpTel has determined that it must discontinue the provision of local and long distance telephone service to the property in which you reside effective as of August 8, 2001. As a result, as of that date, OpTel will no longer be available to provide you with local or long distance service.

You should immediately make plans to transfer your OpTel local and long distance telephone services to the alternative service provider of your choice. You may choose to transfer your service to Southwestern Bell Telephone, the incumbent local exchange telephone company in your area, by calling Southwestern Bell at 1-800-845-7587 or you may choose any other provider of your choice. OpTel will cooperate with your chosen service provider in the transfer of your telephone service. Please be aware that your next provider's credit requirements may be different than OpTel's. In the event that you do not choose an alternative service provider within 40 days of the date of this notice, your telephone service will be transferred to Southwestern Bell on or soon after the date set forth above in order to minimize any interruption of your telephone service. Please note that you may not have the features or specific service package you desire if you do not make the arrangements yourself in advance of an automatic transfer to Southwestern Bell.

If you make arrangements for new telephone service with another provider 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. If you make arrangements with another provider 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. After the payment of your final bill, 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.

If you are charged a switchover or new service fee by your new service provider, then please mail to OpTel a copy of the bill from your new service provider that shows such switchover or new service fee and OpTel will credit your account in the amount of such fee. If your account has a credit balance following the payment of your final bill, then OpTel will refund the fee or credit balance to you within 30 days after the payment of your final bill. Please mail your request for a credit and a copy of the bill from your new service provider to OpTel, Attn: New Service Fee Credit, 1111 W. Mockingbird Ln., Suite 1000, Dallas, Texas 75247.

OpTel has filed an application with the FCC for authority to discontinue service as described above. The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to Federal Communications Commission, Washington, D.C. 20554, referencing the § 63.71 Application of OpTel, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you, including any inability to acquire reasonable substitute service.

OpTel has appreciated the opportunity to be your telephone service provider. Please direct any questions you may have to OpTel's Customer Service Department at 1-800-487-3320.

Sincerely,

OpTel

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SOUTHWESTERN BELL LOGO HERE



DATE

Dear Customer,

Your local telephone service and optional calling features have been recently 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 OpTel's records indicated that no selection was made prior to the specified date in OpTel's letter.

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. 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 1-800-464-7928.

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**

- Depending on your location, 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.
- 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](http://www.swbell.com) or call our office at 800 464-7928.
- Any tariffed new connection charges incurred, as a result of transferring your service to Southwestern Bell will not be charged to you. You will be charged tariffed rates, however, if you request SWB to perform any repair services to OpTel's wire.

- Charges for late payment and returned checks - Residential customers will be charged a flat fee of \$2.95 if balance carried over is \$10.01 or greater, as referenced in the Payment Information section of the telephone bill. Except for federal agencies, a one-time penalty of five percent (5%) will be applicable on commercial or industrial bills (business), not received by SWBT or at SWBT's authorized payment agency by the next bill date.
- 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](http://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.