

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of

Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
In the Matter of 2000 Biennial Review – Review	)	
of Policies and Rules Concerning Unauthorized	)	
Changes of Consumers Long Distance Carriers;	)	
Implementation of Subscriber Carrier Selection	)	
Changes Provisions of the Telecommunications	)	
Act of 1996; Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	CC Docket No. 00-257
	)	
BellSouth Telecommunications Inc.,	)	
Petition for Waiver	)	

**EXPEDITED PETITION FOR WAIVER**

BellSouth Telecommunications, Inc. (“BellSouth”), 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 allow BellSouth to temporarily provide service to certain local exchange residential and business subscribers of Delta Phones, Inc. (“Delta”) without prior customer approval for such service transfer as a result of BellSouth’s discontinuance of service to Delta for Delta’s failure to pay undisputed amounts owed to BellSouth. BellSouth respectfully requests expedited treatment of this Petition so that it can comply with state commission directives that these customers do not experience any service interruption for a limited time in order to provide these customers with an opportunity to effect a seamless transfer to a new carrier.

Expedited Petition for Waiver  
CC Docket No. 94-129  
and CC Docket No. 00-257  
June 24, 2003

## **I. Background**

BellSouth is the incumbent local exchange carrier operating in the States of Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee (“BellSouth’s in-region states”). Delta is a competitive local exchange carrier (“CLEC”) providing local exchange and other services in eight of BellSouth in-region states, primarily through resale and unbundled network element platform (“UNE-P”) arrangements with BellSouth.

Pursuant to Attachment 7, Section 1.7.2 of the Interconnection Agreement between BellSouth and Delta, dated September 25, 2002 (“Agreement”),<sup>1</sup> Delta is obligated to pay all undisputed amounts owed to BellSouth. Additionally, the Agreement states that 15 days after providing notice of nonpayment of past due undisputed amounts, BellSouth may refuse acceptance of any new applications for service and not complete any pending orders for service. The Agreement also states that 30 days after providing notice of nonpayment of past due undisputed amounts, BellSouth can discontinue providing existing services. Pursuant to the terms of the Agreement, BellSouth has provided Delta with notice of the undisputed past due amounts by letters dated May 2, 2003 and May 29, 2003. Such notices stated that failure to pay the past due undisputed amounts specified in the notices within the time frames set forth in the Agreement would lead to BellSouth’s refusal of additional applications for service or to complete pending orders for service, and would ultimately result in discontinuance of service to Delta.

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<sup>1</sup> The appropriate state public service commissions (“PSCs”) approved the Agreement pursuant to section 252(e) of the Communications Act of 1934, as amended.

As of the filing of this petition, Delta has not made payment of the undisputed past due sums. Moreover, no state public service commission or any court of competent jurisdiction has granted a stay of the required payment. Therefore, BellSouth considers its obligation to provide service to Delta to be terminated pursuant to the Agreement.

In one of its in-region states – Louisiana – the public service commission (“PSC”) has directed BellSouth to provide Delta’s end-user customers with continued service for a period of time in order to allow the end users an opportunity to obtain a new local carrier.<sup>2</sup> The continuation of service will allow affected end users the necessary time to make an informed choice of a new service provider, while maintaining their existing service, and ensures a range of consumer choice in the provision of telecommunications services. During this service continuity time frame, BellSouth will temporarily provide each end user in Louisiana with the telecommunications services existing at the end user’s premises as of the date of abandonment by Delta for a specified period of time to allow the end user to select a new service provider. Moreover, pursuant to the direction of its Louisiana PCS, BellSouth will use an automated voice system to provide notice to the end users in Louisiana that BellSouth will maintain the service for a period of time while the end user transitions to a new service provider (“Notice Period”).<sup>3</sup>

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<sup>2</sup> The PSCs in three of BellSouth’s in-region states – Kentucky, North Carolina, and South Carolina – have asked BellSouth to delay the disconnection process. Accordingly, BellSouth has not disconnected Delta in those states. If these states direct BellSouth to provide continued services for a period of time, as Louisiana’s PSC has done, BellSouth will file additional waiver(s) for those states. The remaining states in BellSouth’s region did not require such continuity of service. BellSouth has complied with all disconnection requirements of those state commissions.

<sup>3</sup> BellSouth will use an automated system that can deliver prerecorded messages to an inputted series of telephone numbers to provide affected end users with notice of Delta’s disconnection and BellSouth’s continuity of service for a limited period of time. A script of the prerecorded message BellSouth would provide affected end users in Louisiana is attached as Exhibit A.

Pursuant to this service continuity arrangement, an end user will not be permanently transferred to BellSouth. Instead, BellSouth will provide all Delta end users in Louisiana temporary phone service for a period of time while the end user selects a new carrier. The carrier the end user selects as its permanent service provider, whether it is BellSouth or any other CLEC, will be responsible for complying with the Commission's carrier change requirements.<sup>4</sup> No end user will become a BellSouth customer unless the end user specifically contacts and selects BellSouth as his or her carrier. If an end user fails to select a carrier, that end user's service will be disconnected at the end of the Notice Period. Accordingly, BellSouth's request for waiver of the slamming rules applies only to the provision of temporary service for the period of time that the end users need to select a new permanent carrier.

The temporary transfer of the customers from Delta to BellSouth in Louisiana is not pursuant to a voluntary agreement with Delta but is caused by discontinuance of service as a result of Delta failing to comply with its obligations under the Agreement. Thus, BellSouth is providing these end users with temporary service in order to avoid these end users losing service. Therefore, BellSouth seeks a waiver of the Commission's slamming rules, including this 30-day notification, self-certification, and type and content of notification requirements set forth in the Commission's *Fourth Report and Order*.<sup>5</sup>

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<sup>4</sup> Thus, once end users receive notice that they must select a new carrier, they will then need to contact their carrier of choice directly and make arrangements for service delivery. During the course of this contact, the selected carrier will be responsible for complying with all carrier change rules, including without limitation, third party verification.

<sup>5</sup> *In the Matter of 2000 Biennial Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers; Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket Nos. 00-257 and 94-129, *First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129*, 16 FCC Rcd 11218 (2001) (“*Fourth Report and Order*”). These specific rules related to a bulk transfer are codified at 47 CFR § 64.1120(e). Because

## II. Discussion

Section 1.3 of the Commission's rules authorizes the agency to waive any Commission rule if good cause is shown.<sup>6</sup> Pursuant to Commission rules 64.1100 *et seq.*,<sup>7</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>8</sup> Because of Delta's failure to pay undisputed amounts owed to BellSouth and the resultant discontinuance of service to Delta in accordance with the parties' interconnection agreement, Delta's end users will lose service. Seeking to avoid such loss, the PSC in Louisiana believes it is in the customer's best interest for BellSouth to continue to provide end users with service on a temporary basis while the end users obtain a new carrier. BellSouth is providing this temporary service to Delta's end users in Louisiana to comply with the state commission directives. BellSouth therefore seeks a limited waiver of Commission's rules 64.1100 *et seq.* to allow BellSouth to provide those customers with temporary service without their prior approval until they select a permanent carrier.

It is well settled that the Commission has authority to grant a request for waiver of its rules for good cause shown.<sup>9</sup> There is good cause for waiver of Sections 64.1100 *et seq.* First, the state PSC in Louisiana has required BellSouth to provide continued service for a limited period of time to ensure that Delta end users do not incur a disruption in local exchange service.

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advance notification and the information required in the notification by these rules are not practical in the current situation, BellSouth seeks a waiver of these rules along with all carrier change rules as set forth below.

<sup>6</sup> 47 C.F.R. § 1.3.

<sup>7</sup> 47 C.F.R. §§ 64.1100 *et. seq.*

<sup>8</sup> *Id.* § 64.1120(a).

<sup>9</sup> *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

Because of the special circumstances – the fact that BellSouth did not know Delta would fail to meet its obligations pursuant to the Agreement, thus resulting in BellSouth’s discontinuance of service to Delta, and the fact that, based on BellSouth’s belief and understanding, Delta has not notified its end users on its own accord – it would have been impossible for BellSouth to contact each of Delta’s end users in Louisiana and obtain verification of the end user’s approval prior to Delta’s abandonment date. Without this waiver, BellSouth will be caught between having to comply with the Commission’s rules at the expense of the state PSC directives or comply with the state PSC directives and face technical violation of the Commission’s rules. BellSouth believes that the public interest is best served by allowing BellSouth to provide these end users with continued phone service for a period of time, as directed by the state PSC in Louisiana, to allow them to select a new carrier.

Second, the affected customers will receive post-transfer notification of the change and be allowed to select a new carrier that will comply with the Commission’s carrier change requirements. Thus, the overriding policy goals of the Commission’s carrier-change rules will be fully addressed.

### **III. Conclusion**

For the foregoing reasons, BellSouth requests that the Commission expeditiously grant its request for a limited waiver of the Commission’s carrier-change authorization and verification rules and any other relief the Commission deems appropriate.

Respectfully submitted,

**BELLSOUTH TELECOMMUNICATIONS, INC.**

By: /s/ Stephen L. Earnest  
Stephen L. Earnest  
Richard M. Sbaratta

Its Attorneys

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Dated: June 24, 2003

**UP DATED SCRIPT: Backup recording without BellSouth Telephone numbers.**

**(Recording 1 Starts here:)**

**(English)**

This is an important message to Delta Phones, Inc. Customers. If you have placed an order to transfer your service to another provider, you do not need to listen to the rest of this message. **(Pause)**

Attention Delta Phones, Inc. Customers. Fourteen days from today, service provided by Delta Phones will be interrupted due to Delta Phone's failure to pay for services provided to it by BellSouth. At that time, you may not be able to make or receive normal calls. To avoid service disruption and keep your same telephone number, you must contact a new service provider in the next 2 to 3 days. You have the option of choosing any new local service provider providing service in your area. **(Recording 4 Stops here)**

**EXHIBIT A**

**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 24<sup>th</sup> day of June 2003 served the parties of record to this action with a copy of the foregoing **EXPEDITED PETITION FOR WAIVER** by electronic filing addressed to the parties listed below.

Magalia Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S. W.  
Room TW-B204  
Washington, DC 20554

Qualex International  
Portals II  
445 12<sup>th</sup> Street, SW  
Room CY-B402  
Washington, DC 20554

/s/ Juanita H. Lee  
Juanita H. Lee