

**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
	)	
2000 Biennial Review – Review of 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.

**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

Expedited Petition for Waiver  
CC Docket No. 94-129  
and CC Docket No. 00-257  
August 22, 2003

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 to process additional applications for service or to complete pending orders for service, and would ultimately result in discontinuance of service to Delta.

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

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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.

granted a stay of the required payment.<sup>2</sup> Therefore, BellSouth considers its obligation to provide service to Delta to be terminated pursuant to the Agreement.

In June 2003, BellSouth filed a Petition for Waiver in Louisiana related to Delta because the public service commission (“PSC”) 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>3</sup> The continuation of service was to 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. As noted in *Petition I*, the disconnection of Delta was delayed in three of its in-region states – Kentucky, North Carolina, and South Carolina. BellSouth stated in *Petition I* that if any of these states required BellSouth to provide continued services for a period of time, as Louisiana’s PSC had done, BellSouth would file additional waiver(s) for those states.<sup>4</sup> Since the filing of *Petition I*, the Kentucky PSC has also ordered BellSouth to provide continued service to Delta’s customers for a limited period to allow the customers to obtain another local carrier.<sup>5</sup>

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<sup>2</sup> Delta filed complaints against BellSouth with the state public service commissions (“PSCs”) in several states in BellSouth’s territory. Some of these complaints remain pending; however, no state PSC has stayed Delta’s obligation to pay BellSouth for services.

<sup>3</sup> See Expedited Petition for Waiver filed with the Commission by BellSouth on June 24, 2003, in CC Docket No. 00-257 (“*Petition I*”). See also, *Order* granting BellSouth waiver, DA 03-2264, (rel. July 10, 2003).

<sup>4</sup> The delays in North Carolina and South Carolina remain in effect in both states. Additionally, subsequent to filing *Petition I*, the Tennessee Regulatory Authority (“TRA”) also requested that BellSouth not disconnect Delta while it reviewed the matter further. Since that time, Delta filed a letter with the TRA stating that it was going to withdraw its resale certificate and cease doing business in Tennessee. BellSouth anticipates that the TRA will allow BellSouth to disconnect Delta and will order Delta to notify its customers. The remaining states in BellSouth’s region did not require continuity of service for Delta’s customers and BellSouth has complied with all disconnection requirements of those state commissions.

<sup>5</sup> BellSouth filed an Emergency Service Continuity Plan (“Plan”) in the Kentucky General Subscriber Service Tariff (“GSST”) specifically to deal with the situation where a CLEC has effectively abandoned its end user customers or when some other sufficient emergency exists.

Just as with Louisiana, BellSouth will temporarily provide each former Delta end user in Kentucky 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, just as in Louisiana, BellSouth will use an automated voice system to provide notice to the end users in Kentucky that BellSouth will maintain the service for a period of time while the end user transitions to a new service provider ("Notice Period").<sup>6</sup>

Pursuant to the Plan in the GSST, an end user will not be permanently transferred to BellSouth. Instead, BellSouth will provide all Delta end users in Kentucky 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>7</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.

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The Plan became effective on May 20, 2003. This Plan's terms as provided in the GSST are almost identical to the terms implemented in Louisiana. *See* Section A5.8 of BellSouth's GSST in Kentucky, attached as Exhibit A.

<sup>6</sup> BellSouth uses 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 provides affected end users in Kentucky is attached as Exhibit B.

<sup>7</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.

The temporary transfer of the customers from Delta to BellSouth in Kentucky 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 the 30-day notification, self-certification, and type and content of notification requirements set forth in the Commission's *Fourth Report and Order*.<sup>8</sup>

## II. Discussion

Section 1.3 of the Commission's rules authorizes the agency to waive any Commission rule if good cause is shown.<sup>9</sup> Pursuant to Commission rules 64.1100 *et seq.*,<sup>10</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>11</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 Kentucky believes it is in the customer's best interest for BellSouth to continue to provide end users with service on a

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<sup>8</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 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>9</sup> 47 C.F.R. § 1.3.

<sup>10</sup> 47 C.F.R. §§ 64.1100 *et seq.*

<sup>11</sup> *Id.* § 64.1120(a).

temporary basis while the end users obtain a new carrier. BellSouth is providing this temporary service to Delta's end users in Kentucky to comply with the state commission tariff. 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>12</sup> Just as the Commission found good cause to grant BellSouth's *Petition I* in Louisiana, which had identical circumstances to this Petition, there is good cause for waiver of Sections 64.1100 *et seq.* for Kentucky end users. First, pursuant to the Plan in the GSST in Kentucky, BellSouth is 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. Because of the special circumstances – the fact that Delta failed 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 be impossible for BellSouth to contact each of Delta's end users in Kentucky 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 tariff requirements or comply with the tariff requirements 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, pursuant to the tariff in Kentucky, to allow them to select a new carrier.

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<sup>12</sup> *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

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: August 22, 2003

BELLSOUTH  
TELECOMMUNICATIONS, INC.  
KENTUCKY  
ISSUED: December 18, 2002  
BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A  
First Revised Page 15  
Cancels Original Page 15  
EFFECTIVE: May 20, 2003

**A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS**

**A5.8 Emergency Service Continuity Plan**

**A5.8.1 General**

The Company will provide full or partial Emergency Service Continuity, subject to the rates, terms and conditions stated herein. Service is provided subject to a determination by the Commission, either upon petition by the Company or upon the Commission's own motion, that a Telecommunications Service Provider (TSP) has effectively abandoned service to its end users or that some other sufficient emergency (e.g., bankruptcy) exists to justify use of this tariff.

**A5.8.2 Definition of Terms**

**ABANDONMENT DATE**

The date determined by the Commission that a TSP abandoned or discontinued service to its end users, or the date that some other sufficient emergency exists to justify use of this tariff.

**ABANDONED END USER**

The former subscriber of a TSP that receives service under the rules and regulations of this Tariff.

**COMPETITIVE LOCAL EXCHANGE COMPANY (CLEC)**

Any person or entity possessing a certificate to provide local exchange or exchange access services in conjunction with a Local Exchange Company.

**EMERGENCY SERVICE CONTINUITY**

The service(s) provided pursuant to this tariff.

**NEW SERVICE PROVIDER**

The service provider affirmatively chosen by an Abandoned End User. A new service provider can be either a TSP (CLEC, Interexchange Carrier (IXC) or ILEC) or the Company.

**RESALE**

Occurs when an entity purchases telecommunications service(s) on a wholesale basis from the Company and resells those service(s) to its customers.

**TELECOMMUNICATIONS SERVICE PROVIDER (TSP)**

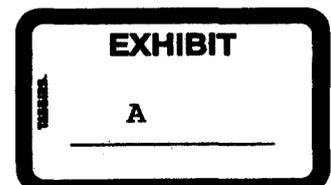
A CLEC, IXC or ILEC.

**A5.8.3 Application**

- A. From the Abandonment Date until an Abandoned End User is transitioned to a New Service Provider, or until denial or disconnection of service as provided in A5.8.4 following, the Company will provide each Abandoned End User with the telecommunications service existing at the end user premises at the time of the Company's assumption of responsibility under this Tariff. Abandoned End Users will not be able to modify the telecommunications service until electing a New Service Provider.
- B. The Company will provide its standard maintenance and repair services, where applicable, while providing Emergency Service Continuity.

**A5.8.4 Notice**

- A. Promptly after receipt of the Commission determination of abandonment or other emergency, the Company will provide notice to Abandoned End Users through the Company's service facilities and/or the public media. The notice will inform Abandoned End Users that:
  - 1. Abandoned End Users may continue to receive telecommunications service through the Emergency Service Continuity Plan for a minimum period of fourteen (14) days from the date initial notice is given while Abandoned End Users decide upon and transition to a New Service Provider.
  - 2. After the notice in 1. preceding has been given and the time period in 1. preceding has transpired, service will be denied unless the Abandoned End User has either transitioned to a New Service Provider or has placed an order to transition to a New Service Provider and that order is being processed. When service is denied, the Abandoned End User will be unable to make or receive calls;
  - 3. After the time period in 1. preceding has passed and a minimum of fourteen (14) additional days have transpired, service will be disconnected unless the Abandoned End User has either transitioned to a New Service Provider or has placed an order to transition to a New Service Provider and that order is being processed.
- B. Use of Company facilities may be discontinued without notice at any time after an Abandoned End User has transitioned to a New Service Provider that does not require use of Company facilities.



BELLSOUTH  
TELECOMMUNICATIONS, INC.  
KENTUCKY

GENERAL SUBSCRIBER SERVICES TARIFF

PSC KY. TARIFF 2A  
Original Page 15.1

ISSUED: December 18, 2002  
BY: E.C. Roberts, Jr., President - KY  
Louisville, Kentucky

EFFECTIVE: May 20, 2003

## A5. CHARGES APPLICABLE UNDER SPECIAL CONDITIONS

### A5.8 Emergency Service Continuity Plan (Cont'd)

(N)

#### A5.8.5 Conditions

(N)

- A. Emergency Service Continuity will be provided where the Company has been the underlying facilities provider through a resale or a UNE-P arrangement with a TSP. (N)
- B. To provide Emergency Service Continuity, the Company must have permission, either directly or through Commission order, to use the customer service record information of Abandoned End Users. (N)
- C. To provide Emergency Service Continuity, the Company must have a waiver of any applicable Commission requirements relating to verification of a change in service provider and the "preferred local carrier freeze". (N)
- D. All other non-rate terms and conditions applicable to general subscriber service (including, without limitation, the limits on the Company's liability for failure to provide service) apply to Emergency Service Continuity. (N)

#### A5.8.6 Rates

(N)

- A. For each Abandoned End User that selects a New Service Provider other than the Company, the Company will charge the New Service Provider a rate equivalent to the appropriate 2-wire loop, port and feature rates (switch as is) in that provider's interconnection agreement for the period from the Abandonment Date through the last date the Company provides Emergency Service Continuity. Thereafter, the applicable rates, terms and conditions of the interconnection agreement for services ordered by the New Service Provider shall be charged, collected and observed. (N)
- B. For each Abandoned End User that selects the Company as its New Service Provider, the Company may charge from the Abandonment Date the rates applicable to the services provided to the end user by the Company consistent with the Company's General Subscriber Service Tariff. (N)

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

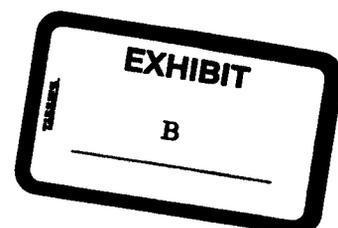
**(Recording 1 Starts here:)**

**(English)**

This is an important message to *[insert carrier name]* 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)**

*[Insert carrier name]* is no longer be able to provide your local telephone service and fourteen days from today your service will be discontinued. At that time, you will 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. Check the front of your telephone directory for a list of companies providing local telephone service.

**(Recording Stops here)**

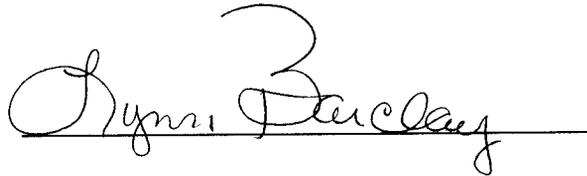


**CERTIFICATE OF SERVICE**

I do hereby certify that I have this 22nd day of August 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.

Marlene H. Dortch  
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

A handwritten signature in cursive script, appearing to read "Dymis Barclay", is written over a horizontal line.