

**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)	

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 EZ Talk Communications LLC (“EZ Talk”) without prior customer approval for such service transfer as a result of BellSouth’s discontinuance of service to EZ Talk for EZ Talk’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

Petition for Waiver
CC Docket No. 94-129 and
CC Docket No. 00-257
October 14, 2003

Tennessee (“BellSouth’s in-region states”). EZ Talk is a competitive local exchange carrier (“CLEC”) providing local exchange and other services in all nine of BellSouth in-region states, primarily through resale and unbundled network element platform (“UNE-P”) arrangements with BellSouth.

Pursuant to the Interconnection Agreement between BellSouth and EZ Talk (“Agreement”),¹ EZ Talk 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 EZ Talk with notice of the undisputed past due amounts by letters dated August 22, 2003 and September 16, 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 EZ Talk.

EZ Talk did not make payment of the undisputed past due sums. Moreover, no state public service commission or any court of competent jurisdiction granted a stay of the required payment. Therefore, BellSouth considers its obligation to provide service to EZ Talk to be terminated pursuant to the Agreement.

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

In two of its in-region states – Georgia and Kentucky – the public service commission (“PSC”) has directed BellSouth to provide EZ Talk’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.² 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 the identified states with the telecommunications services existing at the end user’s premises as of the date of abandonment by EZ Talk for a specified period of time to allow the end user to select a new service provider. Moreover, BellSouth will use an automated voice system to provide notice to the end users in the states that BellSouth will maintain the service for a period of time while the end user transitions to a new service provider (“Notice Period”).³

Pursuant to this service continuity arrangements in each of the states, an end user will not be permanently transferred to BellSouth. Instead, BellSouth will provide all EZ Talk end users in Georgia and 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

² The Georgia PSC has established a rule that contemplates that if the customer fails to select a new provider prior to the effective date of disconnection, "the underlying carrier of local exchange service" (i.e., BellSouth) shall provide the end user with "seven (7) days of basic local exchange service from the date of disconnection provided in the notice." GPSC Rule 515-12-1(4). In Kentucky, 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. The Plan became effective on May 20, 2003. See Section A5.8 of BellSouth’s GSST in Kentucky, attached as Exhibit A.

³ 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 EZ Talk’s disconnection and BellSouth’s continuity of service for a limited period of time. A sample of the script prerecorded message BellSouth will use for affected end users in the states is attached as Exhibit B.

BellSouth or any other CLEC, is responsible for complying with the Commission's carrier change requirements.⁴ 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 EZ Talk to BellSouth in Georgia and Kentucky is not pursuant to a voluntary agreement with EZ Talk but caused by discontinuance of service as a result of EZ Talk 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*.⁵

⁴ 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.

⁵ *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 C.F.R. § 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.

II. Discussion

Section 1.3 of the Commission's rules authorizes the agency to waive any Commission rule if good cause is shown.⁶ Pursuant to Commission rules 64.1100 *et seq.*,⁷ 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.⁸ Because of EZ Talk's failure to pay undisputed amounts owed to BellSouth and the resultant discontinuance of service to EZ Talk in accordance with the parties' interconnection agreement, EZ Talk's end users will lose service. Seeking to avoid such loss, the PSCs in the identified states believe 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 EZ Talk's end users in the states to comply with the state commission directives. BellSouth therefore seeks a limited waiver of the Commission's rules, 47 C.F.R. § 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.⁹ There is good cause for waiver of Sections 64.1100 *et seq.* First, the state PSCs have required BellSouth to provide continued service for a limited period of time to ensure that EZ Talk end users do not incur a disruption in local exchange service. Because of the special circumstances – the fact that BellSouth did not know EZ Talk would fail to meet its obligations pursuant to the Agreement, thus resulting in BellSouth's discontinuance of service to

⁶ 47 C.F.R. § 1.3.

⁷ 47 C.F.R. §§ 64.1100 *et seq.*

⁸ *Id.* § 64.1120(a).

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

EZ Talk, and the fact that, based on BellSouth's belief and understanding, EZ Talk has not notified its end users on its own accord – it would have been impossible for BellSouth to contact each of EZ Talk's end users in these states and obtain verification of the end user's approval prior to EZ Talk'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 PSCs, 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

BellSouth Telecommunications
Suite 4300
675 West Peachtree Street, N. E.
Atlanta, Georgia 30375
(404) 335-0711

Dated: October 14, 2003

EXHIBIT A

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)

EXHIBIT B

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 14th day of October 2003 served the parties of record to this action with a copy of the foregoing **PETITION FOR WAIVER** by electronic filing addressed to the parties listed below.

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Room TW-B204
Washington, DC 20554

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

/s/ Lynn Barclay
Lynn Barclay