

**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 Smart-Tel Communications (“Smart-Tel”) without prior customer approval for such service transfer as a result of BellSouth’s discontinuance of service to Smart-Tel for Smart-Tel’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

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February 10, 2004

Tennessee (“BellSouth’s in-region states”). Smart-Tel is a competitive local exchange carrier (“CLEC”) providing local exchange and other services in several of BellSouth’s in-region states, primarily through resale arrangements with BellSouth.

Pursuant to the Interconnection Agreement between BellSouth and Smart-Tel (“Agreement”),¹ Smart-Tel is obligated to pay all undisputed amounts owed to BellSouth. Upon Smart-Tel’s non-payment of undisputed amounts owed to BellSouth, BellSouth provided Smart-Tel with all notice requirements as established in the Agreement. 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 Smart-Tel.

Smart-Tel 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 Smart-Tel to be terminated pursuant to the Agreement.

In one of its in-region states – Kentucky – the public service commission (“PSC”) has directed BellSouth to provide Smart-Tel’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

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

² 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.

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 Smart-Tel 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 the service continuity plan in Kentucky, an end user will not be permanently transferred to BellSouth. Instead, BellSouth will provide all Smart-Tel end users in Kentucky with 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, 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

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 Smart-Tel'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.

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.

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 Smart-Tel to BellSouth in Kentucky is not pursuant to a voluntary agreement with Smart-Tel but is being caused by discontinuance of service as a result of Smart-Tel 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

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 Smart-Tel's failure to pay undisputed amounts owed to BellSouth and the resultant

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.

⁶ 47 C.F.R. § 1.3.

⁷ 47 C.F.R. §§ 64.1100 *et seq.*

⁸ *Id.* § 64.1120(a).

discontinuance of service to Smart-Tel in accordance with the parties' interconnection agreement, Smart-Tel'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 temporary basis while the end users obtain a new carrier. BellSouth is providing this temporary service to Smart-Tel's end users in the states to comply with the state commission directives.⁹ 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.¹⁰ There is good cause for waiver of Sections 64.1100 *et seq.* First, the state PSC has required BellSouth to provide continued service for a limited period of time to ensure that Smart-Tel end users do not incur a disruption in local exchange service. Because of the special circumstances – the fact that BellSouth did not know Smart-Tel would fail to meet its obligations pursuant to the Agreement, thus resulting in BellSouth's discontinuance of service to Smart-Tel, and the fact that, based on BellSouth's belief and understanding, Smart-Tel has not notified its end users on its own accord – it would have been impossible for BellSouth to contact each of Smart-Tel's end users in these states and obtain verification of the end user's approval prior to Smart-Tel'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.

⁹ See *In the Matter of Notice of BellSouth Telecommunications, Inc. to Disconnect Smart-Tel Communications for Non-Payment*, Case No. 2004-00022, *Order* (Ky. Pub. Svc. Comm'n Jan. 22, 2004). A copy of this *Order* is attached as Exhibit C.

¹⁰ *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

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, 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
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Its Attorneys

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Dated: February 10, 2004

BellSouth Petition for Waiver

CC Docket Nos. 94-129 & 00-257

Exhibit A

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)

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Exhibit B

UP DATED SCRIPT: Smart-Tel.

(Recording 1 Starts here:)

(English)

This is an important message to Smart-Tel customers from BellSouth. 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)**

Smart-Tel is no longer providing your local service and fourteen (14) days from today your service may 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. If you have questions regarding this message you can call NPA-NXX-XXX.

(Recording Stops here)

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Exhibit C

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. TO)	CASE NO.
DISCONNECT SMART-TEL)	2004-00022
COMMUNICATIONS FOR NON-PAYMENT)	

O R D E R

On January 20, 2004, BellSouth Telecommunications, Inc. ("BellSouth") provided written notice to the Commission of its intent to disconnect Smart-Tel Communications ("Smart-Tel") for nonpayment of bills. BellSouth asserts the unpaid amount is \$5,929.12, all of which is for services provided in Kentucky. BellSouth plans to discontinue services to Smart-Tel if payments are not received. Disconnection of Smart-Tel services will affect approximately 51 Kentucky customers.

BellSouth requests authorization to invoke the Emergency Service Continuity Tariff approved by this Commission on May 20, 2003 in Case No. 2002-00310.¹ Invoking this tariff is necessary only if Smart-Tel has not notified its end-users of the service disconnection. If the Emergency Service Continuity Tariff is invoked, BellSouth will continue to provide telephone service to Smart-Tel's customers for a minimum of 14 days after Smart-Tel ceases to operate.

¹ Case No. 2002-00310, Customer Billing and Notice Requirements for Wireline Telecommunications Carriers Providing Service in Kentucky.

The Commission, having reviewed BellSouth's notice and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Smart-Tel shall notify the Commission within 7 calendar days of the date of this Order of its intent to pay the delinquent bill to BellSouth by February 2, 2004, or, in the alternative, of its intent to notify its end-users of the proposed service disconnection. Such written comments shall include a copy of Smart-Tel's customer notice and an affidavit indicating when the notice was mailed and the number of Kentucky customers to whom it was mailed.

2. A copy of BellSouth's notice of intent to disconnect Smart-Tel is attached hereto and incorporated herein.

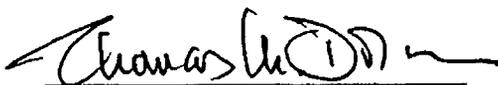
3. If Smart-Tel has not responded as prescribed in Ordering Paragraph 1 within 7 calendar days of the date of this Order, BellSouth shall implement the procedures established in its Emergency Service Continuity Tariff.

4. A copy of this Order shall be sent by certified mail to Smart-Tel.

Done at Frankfort, Kentucky, this 22nd day of January, 2004.

By the Commission

ATTEST:


Executive Director

CERTIFICATE OF SERVICE

I do hereby certify that I have this 10th day of February 2004 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