

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of )
BellSouth Corporation )
Petition for Clarification of )
Request for Immediate Relief filed by the )
State of Tennessee )
Federal-State Joint Board on ) CC Docket No. 96-45
Universal Service )
Changes to the Board of Directors of the ) CC Docket No. 97-21
National Exchange Carrier Association, Inc. )

ORDER

Adopted: November 24, 2003

Released: November 25, 2003

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau addresses the pending Petition for Clarification (Petition) filed by BellSouth Corporation (BellSouth) on September 30, 2003. This Petition relates to an Order, dated July 2, 2003, which granted, in part, the State of Tennessee's (Tennessee) request for immediate relief by modifying the Universal Service Administrative Company's (USAC) Good Samaritan policy in this limited instance. BellSouth seeks clarification that the assumption of the Good Samaritan role in this case does not subject the Good Samaritan to Commitment Adjustment (COMAD) procedures for the application at issue in this proceeding. We grant BellSouth's Petition to the extent provided herein.

1 Request for Immediate Relief filed by the State of Tennessee, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, BellSouth Corporation's Petition for Clarification, filed September 30, 2003 (BellSouth Petition).

2 Request for Immediate Relief filed by the State of Tennessee, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc., CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 13581 (2003) (Tennessee Order).

3 The Commission has adopted procedures to adjust and recover commitments of discount funding that were made to schools and libraries in violation of federal statute. See Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service, CC Dockets No. 96-45 and 97-21, Order, FCC 99-291, (rel. October 8, 1999) (Commitment Adjustment Order), recon. pending; Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal

(continued....)

## II. BACKGROUND

2. On April 17, 2003 the State of Tennessee filed a petition seeking immediate relief to avoid discontinuance of the state's K-12 Internet service prior to the end of the 2002-2003 school year.<sup>4</sup> USAC had ceased processing Tennessee's application for Funding Year 2002, based on information relating to alleged wrongdoing by a principle of Tennessee's selected service provider, Education Networks of America, Inc. (ENA).<sup>5</sup> In Tennessee's petition, it proposed that a substitute service provider be allowed to "step into the shoes of ENA" for the purpose of receiving and distributing universal service funds to subcontractors and others that are necessary to keep the State's network operating.<sup>6</sup>

3. The Commission granted Tennessee's request, in part, by modifying the Good Samaritan policy in this limited instance.<sup>7</sup> The Commission concluded that Tennessee may substitute service providers for purposes of passing through payments to certain subcontractors.<sup>8</sup> Based on this conclusion, the Commission instructed USAC to grant Tennessee's request to substitute a common carrier as its Good Samaritan service provider for Funding Year 2002, consistent with its existing procedures for Good Samaritan providers and to process Tennessee's application. Further, the Commission indicated that if Tennessee's application and invoices submitted by ENA's subcontractors comply with program rules, USAC may then disburse discounts to the designated Good Samaritan for payment to ENA's subcontractors. BellSouth has agreed to accept the role of Good Samaritan for Tennessee's Funding Year 2002 application.<sup>9</sup>

---

(...continued from previous page)

*Service*, CC Dockets No. 96-45 and 97-21, Order, 15 FCC Rcd 22975 (rel. October 26, 2000) (adopting adjustment procedures).

<sup>4</sup> Request for Immediate Relief by the State of Tennessee to Change its Service Provider for Funding Year 2002, filed April 17, 2003 (Tennessee Petition).

<sup>5</sup> *Tennessee Order*, 18 FCC Rcd at 13584, para. 11.

<sup>6</sup> *Id.* at para. 12.

<sup>7</sup> *Id.*, 18 FCC Rcd at 13586, para. 16. The Good Samaritan policy is a procedure that USAC has implemented to address specific situations in which a funding commitment has been approved, services have been rendered and paid for by the applicant at the undiscounted rate during a particular funding year, but the service provider is unable to receive BEAR (Billed Entity Applicant Reimbursement). In situations where the service provider originally selected by an applicant has gone out of business, or filed for bankruptcy protection before processing BEAR payment (s) for the applicant, USAC permits the applicant to obtain BEAR payments through a substitute service provider, known as a "Good Samaritan." See SLD's website, <<http://www.sl/universalservice.org/reference/goodsam.asp>>. The role of the Good Samaritan is simply to receive the BEAR payment from SLD and pass the reimbursement through to the applicant. *Id.*

<sup>8</sup> The Commission did not authorize payment to ENA at this time. *Tennessee Order*, 18 FCC Rcd at 13588, para. 20. As a result, the Commission instructed USAC to set aside on ENA's account any funds that would have been paid to ENA to compensate it directly for its services under the Tennessee contract. Further, the Commission denied Tennessee's request that payments be made to the Good Samaritan to cover the salaries of certain ENA employees who are necessary to keep the network operational for the remainder of the year. *Id.*

<sup>9</sup> BellSouth was one of ENA's subcontractors for the Tennessee Funding Year 2002 application. See BellSouth Petition at 2. See also Good Samaritan Service Provider Notification and Agreement, dated October 10, 2003 (signed October 24, 2003, by John C. Ross, BellSouth Authorized Representative, accepting the role of Good Samaritan).

4. On September 30, 2003, BellSouth filed the instant petition, requesting clarification on the Commission's Order.<sup>10</sup> Specifically, BellSouth requests clarification that, as the Good Samaritan carrier in this instance, BellSouth will not be subject to any COMAD liability for this application, should USAC seek reimbursement of disbursed funds to the state of Tennessee for any reason.<sup>11</sup>

### III. DISCUSSION

5. In the event that it becomes necessary to initiate COMAD procedures with respect to the Tennessee Funding Year 2002 application for discounts, we clarify that USAC should seek repayment directly from the subcontractors, or service providers, that receive funding from the Good Samaritan under the *Tennessee Order*. To the extent that the Good Samaritan may itself receive funding as a subcontractor to ENA, USAC may seek repayment under COMAD procedures from the Good Samaritan for those specific funds related to its services as a subcontractor to ENA, if necessary.

6. The Commission stated in the *Commitment Adjustment Order* that it would seek repayment from service providers, rather than schools and libraries, because the providers "actually receive disbursements of funds from the universal service support mechanism."<sup>12</sup> In the *Tennessee Order*, the Commission determined that it was appropriate for a Good Samaritan to pass through funding to other service providers, who were subcontractors under Tennessee's Funding Year 2002 application.<sup>13</sup> Thus, under the *Tennessee Order*, funding will be provided to other service providers, albeit through a Good Samaritan. As a result, in this limited situation, we conclude it would be consistent with the *Commitment Adjustment Order* to seek repayment from the subcontractor to which the Good Samaritan passed through funds. We also note that the Good Samaritan may serve a dual function under the *Tennessee Order*, as both Good Samaritan and subcontractor. In that instance, it would be appropriate to seek repayment from the Good Samaritan for funding that it might receive as a subcontractor for services performed under the Tennessee Funding Year 2002 application.

7. Accordingly, we clarify that if it becomes necessary to seek recovery of disbursed funds for the Tennessee Funding Year 2002 application under COMAD procedures, the procedures will be directed to the subcontractor that receives funding from the Good Samaritan under the terms of the *Tennessee Order*. Further, to the extent that the Good Samaritan receives funding as a subcontractor to ENA, COMAD procedures will be directed to the Good Samaritan.

---

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Commitment Adjustment Order*, at para. 8.

<sup>13</sup> In contrast, under the general Good Samaritan policy, the Good Samaritan receives the BEAR payment from SLD and passes the reimbursement through to the *applicant*.

**IV. ORDERING CLAUSE**

8. ACCORDINGLY, IT IS ORDERED, pursuant to the authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§0.91, 0.291, and 54.722(a), that the Petition for Clarification filed by BellSouth Corporation on September 30, 2003, is GRANTED to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Wireline Competition Bureau