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IN RE:

SHOW CAUSE PROCEEDING  
AGAINST EZ TALK COMMUNICATIONS,  
LLC FOR VIOLATIONS OF TENN. CODE  
ANN. § 65-4-125 AND TENN. RULES &  
REGS. 1220-4-2-.56

DOCKET NO.  
03-00632

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**RESPONSE OF CONSUMER SERVICES AND EXTERNAL AFFAIRS DIVISION TO  
APPEAL OF EZ TALK COMMUNICATIONS, L.L.C. OF INITIAL ORDER  
REVOKING CERTIFICATE OF AUTHORITY AND IMPOSING MONETARY  
SANCTIONS**

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The Consumer Services and External Affairs Division ("CSD") of the Tennessee Regulatory Authority ("TRA" or "Authority") files this response to the appeal of the Initial Order of the Hearing Officer filed by EZ Talk Communications, L.L.C. ("EZ Talk") in the above-captioned proceeding.

**Background and Procedural History**

Both the *Order Requiring EZ Talk, Communications, LLC to Appear and Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue* ("Show Cause Order")<sup>1</sup> and the *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* ("Initial Order")<sup>2</sup> issued by the Hearing Officer in this docket fully describe the investigation by the CSD that led to the request for the issuance of the *Show Cause Order* and to

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<sup>1</sup> *Order Requiring EZ Talk, Communications, LLC to Appear and Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue* (December 18, 2003).

<sup>2</sup> *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* (January 12, 2004).

the *Initial Order* that is the basis of this appeal. To summarize briefly, beginning in October 2003, the Authority received numerous consumer complaints against Delta Phones, Inc. (“Delta Phones”), a prepaid local telephone service provider, alleging that the consumers’ telephone service had been terminated without notice.<sup>3</sup> As a result of a billing dispute, BellSouth had filed a letter with the Authority on August 25, 2003 stating that it intended to terminate service to Delta Phones on September 4, 2003.<sup>4</sup> Because the Delta Phones customers who filed complaints had continued to receive telephone service after September 4, 2003, it became apparent to the investigators that a company other than Delta Phones had been providing telephone service at the time of the termination of the customers’ service.<sup>5</sup> After subpoenas were issued to BellSouth Telecommunications, Inc. (“BellSouth”), the CSD determined from BellSouth records that the Delta Phones customers had been switched to EZ Talk at the request of EZ Talk.<sup>6</sup> The former Delta Phones customers were contacted by the CSD, and twenty-one (21) customers confirmed in writing that they had not authorized their local telephone service to be switched to EZ Talk.<sup>7</sup> Based on this preliminary investigation that indicated numerous violations of Tenn. Code Ann. § 65-4-125(a), the CSD requested that the Authority open a docket to pursue a show cause in this matter.

At a regularly scheduled Authority Conference held on December 15, 2003, the voting panel assigned to this docket voted to appoint a Hearing Officer and authorized the Hearing Officer to determine whether to issue a show cause order, and, if a show cause order was issued,

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<sup>3</sup> Transcript of Show Cause Hearing, p. 8-9 (January 7, 2004).

<sup>4</sup> *Id.*, pp. 20 – 21 (January 7, 2004).

<sup>5</sup> *Id.*, p. 22 (January 7, 2004).

<sup>6</sup> *Id.*, p. 25 (January 7, 2004).

<sup>7</sup> *Id.*, pp. 17-18 (January 7, 2004).

to render an initial decision on the merits of the case, including findings of fact and conclusions of law.<sup>8</sup>

Based upon the preliminary investigation and recommendation of the CSD, the Hearing Officer issued the *Show Cause Order* on December 18, 2003.<sup>9</sup> The *Show Cause Order* contained twenty-one (21) counts, with each count based upon an individual customer of Delta Phones who had apparently had their local service telephone provider switched to EZ Talk by EZ Talk without the authorization of the customer.<sup>10</sup> Each count gave the number of days, based on BellSouth records, that each of the twenty-one (21) customers had received service from EZ Talk.<sup>11</sup> The total days of apparently unauthorized service for all twenty-one (21) customers was one thousand six hundred and seventy-seven (1,677) days.<sup>12</sup> The *Show Cause Order* directed EZ Talk to appear before the Hearing Officer on Wednesday, January 7, 2004 at 10:00 a.m. in the Hearing Room at the Authority and show cause why the Authority should not issue an order revoking EZ Talk's reseller certificate and imposing civil penalties pursuant to Tenn. Code Ann. § 65-4-125(f).<sup>13</sup> EZ Talk filed no response to the *Show Cause Order*.<sup>14</sup>

A hearing on the merits was held as scheduled on January 7, 2004.<sup>15</sup> No one appeared on behalf of EZ Talk.<sup>16</sup> General Counsel for the Authority outlined the procedures used to provide notice of the hearing to EZ Talk and conversations he and other Authority staff had with a

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<sup>8</sup> *Order Appointing a Hearing Officer*, pp. 1-2 (December 18, 2003).

<sup>9</sup> See *Order Requiring EZ Talk, Communications, LLC to Appear and Show Cause Why an Order Revoking Its Reseller Certificate and/or Imposing a Fine Should Not Issue* (December 18, 2003).

<sup>10</sup> *Id.*, pp. 4-15 (December 18, 2003).

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

<sup>12</sup> *Id.*, p. 16 (December 18, 2003).

<sup>13</sup> *Id.*, p. 17 (December 18, 2003).

<sup>14</sup> *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 7 (January 12, 2004).

<sup>15</sup> *Id.*

<sup>16</sup> Transcript of Show Cause Hearing, p. 3 (January 7, 2004).

representative of EZ Talk, Mr. Ashish Patel. Mr. Patel confirmed he had knowledge of the date of the proceedings.<sup>17</sup>

The CSD then presented evidence that twenty-one (21) customers of Delta Phones had their local service telephone provider switched to EZ Talk by EZ Talk without the authorization of those customers. Specifically, Mr. John Conners, investigator for the CSD, testified at the hearing about his investigation of the complaints from Delta Phones customers about the termination of their service.<sup>18</sup> Mr. Conners further testified about information he had received from Delta Phones dealers in the course of the investigation that indicated their Delta Phones customers had been switched to EZ Talk.<sup>19</sup> This information included internet correspondence, admitted into evidence, between Delta Phones dealer Kandy Littrell and Chiara Nash, a Delta Phones representative, who stated that Ms. Littrell's Delta Phones customers had been "converted to EZ Talk." and "I'm going to fax you two forms, LOA, letters of authorization. If you will get the customers to sign both forms, this is something we should have done when we converted the customers to EZ Talk."<sup>20</sup> Mr. Conners also testified about the written statements he received from twenty-one (21) Delta Phones customers, admitted into evidence, all indicating they had not authorized EZ Talk to switch their service from Delta Phones to EZ Talk.<sup>21</sup>

Dr. Eddie Roberson, Chief of the CSD, testified concerning records the CSD subpoenaed from BellSouth concerning the migration of Delta Phones customers to other local telephone service providers.<sup>22</sup> According to Dr. Roberson, these records, admitted into evidence, showed that EZ Talk made the request to BellSouth that the twenty-one (21) Delta Phones customers be

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<sup>17</sup> *Id.*, pp. 4-5 (January 7, 2004).

<sup>18</sup> *Id.*, pp. 8-10 (January 7, 2004).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*, pp. 10-14 (January 7, 2004).

<sup>21</sup> *Id.*, pp. 17-18 (January 7, 2004).

<sup>22</sup> *Id.*, pp. 24 -30 (January 7, 2004).

switched to EZ Talk.<sup>23</sup> Dr. Roberson also testified that additional subpoenaed BellSouth records, also admitted into evidence, showed the number of days each of the customers had received local telephone service from EZ Talk.<sup>24</sup> According to Dr. Roberson, the total number of days of violations for all twenty-one (21) customers was one thousand six hundred and seventy-seven (1,677).<sup>25</sup>

Based upon the evidence presented of the violations of Tenn. Code Ann. § 65-4-125(a) and TRA Rule 1220-4-2-.56, the CSD requested the revocation of EZ Talk's reseller certificate and imposition of a civil penalty of \$100 to \$1,000 per each day of violation for each of the twenty-one (21) customers.<sup>26</sup>

At the close of the hearing, the Hearing Officer found that notice of the hearing was properly effectuated and actually received by EZ Talk.<sup>27</sup> The Hearing Officer also found that EZ Talk had the burden of proof to show cause why they should not be found in violation of Tenn. Code Ann. § 65-4-125(a) and TRA Rule 1220-4-2-.56, and through their absence had failed to meet that burden.<sup>28</sup> The Hearing Officer further found that EZ Talk was in violation of Tenn. Code Ann. § 65-4-125(a) and TRA Rule 1220-4-2-.56 with regard to all counts alleged in the Show Cause Order.<sup>29</sup> The Hearing Officer took the issue of fines or other penalties under advisement.<sup>30</sup>

The Hearing Officer entered an *Initial Order* in this docket on January 12, 2004.<sup>31</sup> In the *Initial Order*, the Hearing Officer concluded that "EZ Talk failed to comply with Tenn. Code

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<sup>23</sup> *Id.*, p. 29-30 (January 7, 2004).

<sup>24</sup> *Id.*, pp. 29-30 (January 7, 2004).

<sup>25</sup> *Id.*, p. 30 (January 7, 2004).

<sup>26</sup> *Id.*, pp 36-37 (January 7, 2004).

<sup>27</sup> *Id.*, pp. 37-38 (January 7, 2004).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 14 (January 12, 2004).

Ann. § 65-4-125 and Tenn. Rules & Regs. 1220-4-2-.56 on the ground that in all instances put forth in the Show Cause Order EZ Talk did not obtain authorization to change the telephone service provider for each subscriber in question from Delta Phones to EZ Talk and knew or reasonably should have known that it did not have such authorization.”<sup>32</sup> The Hearing Officer further found “that the evidentiary record unequivocally demonstrates that EZ Talk has repeated violated Authority rules and regulations and Tennessee law.”<sup>33</sup> Based on the Hearing Officer’s review of the evidence, he found that one million six hundred seventy-seven thousand dollars (\$1,677,000.00) should be imposed as the monetary sanction for the violations listed in the *Show Cause Order*.<sup>34</sup> The Hearing Officer also revoked the Certification as a reseller of telecommunications services granted to EZ Talk Communications, LLC by Order of the Tennessee Regulatory Authority entered in Docket No. 98-00390.<sup>35</sup> The *Initial Order* also provided: “Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for Appeal pursuant to Tenn. Code Ann. 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. If the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial Order within the time prescribed by Tenn. Code Ann. § 4-5-315, this Order shall become the Final Order.”<sup>36</sup>

EZ Talk filed an appeal of the *Initial Order* on January 28, 2004.<sup>37</sup>

### **Argument**

- A. EZ Talk’s appeal was not filed within the time required by Tenn. Code Ann. § 4-5-315(b), Tenn. R. & Regs. 1220-1-1-.11(1) and the Hearing Officer’s Initial Order, and therefore should be dismissed.**

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<sup>32</sup> *Id.*, p. 11 (January 12, 2004).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, p. 12 (January 12, 2004).

<sup>35</sup> *Id.*, p. 13 (January 12, 2004).

<sup>36</sup> *Id.*, p. 14 (January 12, 2004).

Tenn. Code Ann. § 4-5-315(b) provides, in part, as follows:

(b) A petition for appeal from an initial order shall be filed with the agency, or with any person designated for such purpose by rule of the agency, within fifteen (15) days after entry of the initial order.<sup>38</sup>

The Hearing Officer's *Initial Order* was entered on January 12, 2004.<sup>39</sup> The *Initial Order* states: "Any party aggrieved by the decision of the Hearing Officer in this matter may also file a Petition for Appeal pursuant to Tenn. Code Ann. § 4-5-315 with the Tennessee Regulatory Authority within fifteen (15) days from and after the date of this Order. If the Tennessee Regulatory Authority or any of the parties herein do not seek review of this Initial Order within the time prescribed by Tenn. Code Ann. § 4-5-315, this Order shall become the Final Order."<sup>40</sup> The *Initial Order* further provides: "Any time for the filing of a Petition for Review, Appeal, or Reconsideration of this Order shall commence to run from the date of the entry of this Order."<sup>41</sup>

TRA Rule 1220-1-1-.11(1), in pertinent part, states: "Any filing required by the Authority by a date certain shall be filed in the office of the Chair of the Authority by 2:00 p.m. on that date."<sup>42</sup>

The fifteenth day after entry of the *Initial Order* was Wednesday, January 27, 2004. EZ Talk's appeal was sent by facsimile to the Authority after the close of business on January 27, 2004 and consequently was filed on Thursday, January 28, 2004, after the deadline set by statute,

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<sup>37</sup> *Appeal of EZ Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* (January 28, 2004).

<sup>38</sup> Tenn. Code Ann. § 4-5-315(b) (Supp. 2003).

<sup>39</sup> *Initial Order Revoking Certificate Of Authority And Imposing Monetary Sanctions*, p. 14 (January 12, 2004).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Tenn. Comp. R. & Regs. 1220-1-1-.11(1).

Authority rules and the Hearing Officer's *Initial Order*.<sup>43</sup> In addition, EZ Talk's facsimile filing did not comply with the filing procedures set forth in Tenn. Comp. R. & Regs. 1220-1-1-.03(7). Under that rule, when documents are submitted by facsimile to the Authority, an original and the requisite number of written copies must follow and be postmarked within the time fixed for filing. No original or copies of the appeal were filed in this docket as required.

Therefore, EZ Talk's appeal should be dismissed for failure to comply with Tenn. Code Ann. § 4-5-315(b), Tenn. Comp. R. & Regs. 1220-1-1-.11(1) and 1220-1-1-.03, and the Hearing Officer's *Initial Order*. In accordance with the Hearing Officer's *Initial Order*, the *Initial Order* became a Final Order in this matter at the close of business on January 27, 2004 and EZ Talk no longer had the right to appeal to the Authority..

**B. EZ Talk has failed to meet its burden of proof, and its request to overturn the *Initial Order* should be denied.**

When a show cause order is issued, the burden of proof is on the party directed to show cause.<sup>44</sup> EZ Talk did not appear at the show cause hearing to present any proof and the Hearing Officer found that EZ Talk did not carry its burden.<sup>45</sup> The Hearing Officer did find, however, that the "substantial weight of the evidence demonstrates that EZ Talk has engaged in a pattern of misconduct, including slamming, that is unacceptable in Tennessee" and that the "CSD has clearly and convincingly demonstrated that the record supports the facts alleged against EZ Talk."<sup>46</sup>

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<sup>43</sup> The time stamp from the Authority's fax machine shows the time was 16:34 on January 27, 2004. See *Appeal of EZ Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions* (January 28, 2004).

<sup>44</sup> See Tenn. Code Ann. § 65-2-109(5).

<sup>45</sup> Transcript of Show Cause Hearing, p. 37 (January 7, 2004).

<sup>46</sup> *Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 12 (January 12, 2004).

In its appeal, EZ Talk now submits “the Initial Order cannot stand” because “Delta Phones purchased telecommunications services from EZ Talk Communications” and “[a]t all times, end users were receiving invoices and telephone service from Delta Phones, Inc.”<sup>47</sup> However, EZ Talk has not submitted any proof of its assertions and the weight of the evidence presented at the show cause hearing contradicts EZ Talk’s assertions in its appeal.<sup>48</sup>

Tenn. Code Ann. § 65-4-125(a) and Tenn. Rules & Regs. 1220-4-2-.56 prohibit “slamming” or the unauthorized switching of the customer’s preferred local or long distance carrier.<sup>49</sup> Tenn. Code Ann. § 65-4-125(a) states:

(a) No telecommunications service provider, and no person acting on behalf of any telecommunications provider, shall designate or change the provider of telecommunications services to a subscriber if the provider or person acting on behalf of the provider knows or reasonably should know that such provider or person does not have the authorization of such subscriber.<sup>50</sup>

Substantial evidence presented at the show cause hearing clearly shows EZ Talk was the telecommunications service provider that requested the change of provider of telephone service from Delta Phones to EZ Talk for twenty-one (21) customers.<sup>51</sup> This evidence included subpoenaed records of BellSouth Telecommunications, Inc. (“BellSouth”).<sup>52</sup> Dr. Eddie Roberson, Chief of the Consumer Services and External Affairs Division, testified BellSouth records introduced into evidence as Exhibit 6 indicated the code for the carrier that requested the switch for each of the subscribers. According to these BellSouth records, the code for each of the

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<sup>47</sup> *Appeal of EZ Talk Communications, L L C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 2 (January 28, 2004).

<sup>48</sup> EZ Talk’s appeal is based on assertions that are not part of the record, were not presented as sworn testimony and upon which the CSD has not been afforded a chance to perform cross-examination. The CSD will respond to the assertions made in the appeal, does not concede the accuracy of EZ Talk’s assertions.

<sup>49</sup> Transcript of Show Cause Hearing, pp. 22-23 (January 7, 2004).

<sup>50</sup> Tenn. Code Ann. § 65-4-125(a) (Supp. 2003).

<sup>51</sup> Transcript of Show Cause Hearing, pp. 24-26 (January 7, 2004).

<sup>52</sup> *Id*

twenty-one (21) customers was 7667 -- the code for EZ Talk.<sup>53</sup> Therefore, the switch of their telephone service was done at the request of EZ Talk, not Delta Phones.

In addition, evidence was introduced at the hearing that a representative of Delta Phones, Chiara Nash, had through internet correspondence told Delta Phones Dealer Kandy Littrell that all of Ms. Littrell's customers had been "converted to EZ Talk."<sup>54</sup> In addition, Delta Phones representative Chiara Nash wrote Ms. Littrell "I'm going to fax you two forms, LOA, letters of authorization. If you will get the customers to sign both forms, this is something we should have done when we converted the customers to EZ Talk."<sup>55</sup> If these customers had remained subscribers of Delta Phones, no letters of authorization would be needed. Therefore, these statements of the Delta Phones representative are inconsistent with EZ Talk's position that these former Delta Phones customers were not switched to EZ Talk.

The evidence clearly indicates that EZ Talk did not have the authorization of the twenty-one (21) subscribers to switch their telephone service provider from Delta Phones to EZ Talk. Mr. John Connors, an investigator for the CSD, testified about his correspondence with twenty-one (21) Delta Phones subscribers whose service was switched to EZ Talk.<sup>56</sup> The evidence introduced at the hearing included written statements in which each of the twenty-one (21) former Delta Phones subscribers that confirmed they had not authorized the switch.<sup>57</sup> EZ Talk has not provided letters of authorization or other proof to contradict these written statements.

EZ Talk asserts that in an effort to prevent customer disconnections as a result of termination of service to Delta Phones from BellSouth, Delta Phones purchased

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<sup>53</sup> *Id.*, p. 25 (January 7, 2004).

<sup>54</sup> *Id.*, p. 13 (January 7, 2004).

<sup>55</sup> *Id.*, p. 14 (January 7, 2004).

<sup>56</sup> *Id.*, pp. 15-17 (January 7, 2004).

<sup>57</sup> *Id.*

telecommunications services from EZ Talk.<sup>58</sup> EZ Talk has presented no proof of this assertion. As EZ Talk notes, BellSouth filed a letter with the Authority on August 25, 2003 that stated BellSouth would terminate Delta Phones' service on September 4, 2003.<sup>59</sup> However, each of the twenty-one (21) customers had already had their service switched to EZ Talk by EZ Talk in early July 2003.<sup>60</sup>

EZ Talk asserts that the customers were still receiving invoices from Delta Phones.<sup>61</sup> If true, the former Delta Phones name on the invoice could explain why the Delta Phones customers did not realize that their service provider had been switched to EZ Talk.<sup>62</sup> However, such invoices would not refute that the customers were switched without their authorization and that subpoenaed BellSouth records showed that EZ Talk, not Delta Phones, requested the switch. The company's name on the invoice is not conclusive proof of the identity of the telephone service provider – the subpoenaed BellSouth records are.

The substantial evidence presented at the hearing clearly proves that twenty-one (21) Delta Phones subscribers had their telecommunications service changed to EZ Talk at EZ Talk's request without the authorization of those subscribers in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Rules & Regs. 1220-4-2-.56. EZ Talk has not refuted the BellSouth records that show EZ Talk requested those customers' telephone service switched, nor has it presented any proof that the customers authorized the switch. EZ Talk's request to overturn the *Initial Order* should be denied.

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<sup>58</sup> *Appeal of EZ Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 2 (January 28, 2004).

<sup>59</sup> *Id*

<sup>60</sup> Transcript of Show Cause Hearing, pp. 29-30 (January 7, 2004).

<sup>61</sup> *Appeal of EZ Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 2 (January 28, 2004).

<sup>62</sup> EZ Talk does not state in its appeal when the invoices from Delta Phones were allegedly sent to the customers. Delta Phones, through its counsel, had given notice to the Authority on August 15, 2003 that it was surrendering its

**C. EZ Talk's request to reverse the *Initial Order* on the grounds that EZ Talk did not have counsel present at the show cause hearing is without merit and should be denied.**

EZ Talk requests the Authority to reverse the Hearing Officer's *Initial Order* "on the grounds that, due to financial hardship, EZ Talk did not have counsel present at the show cause hearing."<sup>63</sup> EZ Talk states that its "in-house regulatory counsel resigned with little notice days before the hearing" and it was "impossible for EZ Talk to hire local counsel in time and at a reasonable cost" to represent EZ Talk at the proceeding.<sup>64</sup>

Notably, EZ Talk does not dispute its knowledge of the place, date and time of the show cause hearing, but merely contends it could not afford to hire local counsel to appear. The record of the show cause hearing includes the statements of the Authority's General Counsel concerning the Authority's notice to EZ Talk of the hearing and the Authority staff's conversations with Mr. Ashish Patel of EZ Talk about the hearing.<sup>65</sup> According to General Counsel, Mr. Patel told him on January 5, 2004 that "he was aware of the show cause proceedings and that the CEO of the company had not yet made a decision on whether or not to retain local counsel."<sup>66</sup> General Counsel also related that Mr. Patel told him he would call the next day with that information.<sup>67</sup> After not hearing from Mr. Patel at the time he said he would call, General Counsel left two voice mail messages with Mr. Patel.<sup>68</sup> General Counsel did not receive a call back from Mr. Patel.<sup>69</sup>

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reseller's certificate in Tennessee. See Letter from Henry Walker to Richard Collier, Docket No. 03-00457 (August 15, 2003).

<sup>63</sup> Transcript of Show Cause Hearing, p. 3 (January 7, 2004).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*, pp. 3-6 (January 7, 2004).

<sup>66</sup> *Id.*, pp. 5-6 (January 7, 2004).

<sup>67</sup> *Id.*, p. 6 (January 7, 2004).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

Officials of EZ Talk could have chosen to appear *pro se* on behalf of the company at the show cause hearing, as they have chosen to do in the filing of this appeal.<sup>70</sup> However, the record reflects that no representative from EZ Talk appeared at the hearing.<sup>71</sup> Further, nowhere in the record nor in EZ Talk's appeal is there any indication that EZ Talk sought a continuance of the show cause hearing due to any of its alleged difficulties in obtaining counsel or for any other reason.

At the close of the show cause hearing, the Hearing Officer found that notice was properly effectuated and actually received by EZ Talk.<sup>72</sup> EZ Talk officials received adequate notice and were given the opportunity to appear at the show cause proceeding on January 7, 2004, but chose not to do so. The Authority should not allow the silence on the part of the officials of EZ Talk regarding the hiring of counsel to be used as a ground to reverse the Hearing Officer's decision. EZ Talk's failure to obtain local counsel to appear on EZ Talk's behalf at the hearing is not a ground for overturning the *Initial Order*, and EZ Talk's request should be denied.

**D. EZ Talk's request that the proceedings by the Authority against EZ Talk be automatically stayed because of the filing of a voluntary bankruptcy petition is without merit and should be denied.**

In its appeal, EZ Talk requests that all proceedings against it, including the issuance of a final order, be stayed based upon a voluntary petition for Chapter 11 Bankruptcy EZ Talk filed on January 8, 2004.<sup>73</sup> EZ Talk alleges that the "filing of the voluntary petition activates the automatic stay provided in § 362 of the Bankruptcy Code."<sup>74</sup>

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<sup>70</sup> See Tenn. R. & Regs. 1220-1-2-.04(2).

<sup>71</sup> Transcript of Show Cause Hearing, p. 3 (January 7, 2004).

<sup>72</sup> *Id.* at p. 37.

<sup>73</sup> EZ Talk states: "A Voluntary Petition seeking relief under Chapter 11, United States Code, was filed by EZ Talk Communications, L.L.C., in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division on the 8th day of January, 2004. The Voluntary Petition was assigned Case No. 04-00828." *Appeal of EZ*

United States Code Annotated, 11 U.S.C.A. § 362, reads in pertinent part as follows:

362. Automatic stay

(a) **Except as provided in subsection (b) of this section**, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of

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(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

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(b) **The filing of a petition** under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, **does not operate as a stay** —

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(4) **under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit** or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13,

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*Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 3 (January 28, 2004).

<sup>74</sup> *Appeal of EZ Talk Communications, L.L.C. of Initial Order Revoking Certificate of Authority and Imposing Monetary Sanctions*, p. 3 (January 28, 2004).

1993, to enforce such government unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power.<sup>75</sup> (Emphasis added.)

The Tennessee Regulatory Authority is a governmental unit of the State of Tennessee and is appropriately exercising its regulatory enforcement powers pursuant to state law in this proceeding.<sup>76</sup> The federal bankruptcy statute regarding automatic stays cited by EZ Talk and set forth above provides a clear exception for governmental units enforcing their regulatory powers, including the continuation of proceedings for both monetary and non-monetary judgments. Therefore, this proceeding which assessed a civil penalty of monetary sanctions and which revoked EZ Talk's reseller's certificate clearly is not stayed automatically by the filing of EZ Talk's voluntary petition for bankruptcy. EZ Talk's request for an automatic stay pursuant to its Chapter 11 bankruptcy filing should be denied.<sup>77</sup>

## **Conclusion**

Based on the evidence presented and contained in the record and the arguments presented above, the Consumer Services and External Affairs Division of the Tennessee Regulatory Authority respectfully requests that the appeal filed by EZ Talk, Communications, LLC be dismissed for failure to comply with the time limits for filing required by Tenn. Code Ann. § 4-5-

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<sup>75</sup> 11 U.S.C.A. § 362 (1993 & Supp. 2003).

<sup>76</sup> See Tenn. Code Ann. §§ 65-1-101, 65-1-213 and 65-4-125.

<sup>77</sup> EZ Talk's request for an automatic stay is based upon the federal bankruptcy statute. If the request is construed as an application for a stay based on state law, the request does not meet the criteria of Tenn. Code Ann. § 4-5-316 and Tenn. R. & Regs. 1220-1-2-.19 and should be denied.

315(b), Tenn. R. & Regs. 1220-1-1-.11(1) and the Hearing Officer's *Initial Order* of January 12, 2004. In the alternative, the Consumer Services and External Affairs Division respectfully requests that the appeal of EZ Talk Communications, LLC requesting the Authority to overturn the *Initial Order* of the Hearing Officer be denied for the reasons stated above.

Finally, the Consumer Services and External Affairs Division requests the entry of an order denying the appeal and upholding the *Initial Order* of the Hearing Officer in all respects, including: 1) the Hearing Officer's finding of multiple violations by EZ Talk Communications, LLC of Tenn. Code Ann. § 65-4-125 and Tenn. Comp. R. & Regs. 1220-4-2-.56; 2) the Hearing Officer's revocation of the Certification as a reseller of telecommunications services granted to EZ Talk Communications, LLC by Order of the Tennessee Regulatory Authority entered in Docket No. 98-00390; and 3) the Hearing Officer's imposition of a civil penalty consisting of a monetary sanction of one million six hundred seventy-seven thousand dollars (\$1,677,000.00).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jean A. Stone".

Jean A. Stone, BPR # 013065

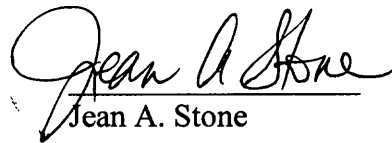
Counsel

Consumer Services and External Affairs Division  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243

**CERTIFICATE OF SERVICE**

I hereby certify that on February 4, 2004, a copy of the foregoing document was served on the following parties of record, via facsimile and overnight mail:

Mr. Ashish Patel  
Chief Regulatory Officer  
EZ Talk Communications, LLC  
1245 East Diehl Road, Suite 300  
Naperville, IL 60563  
Facsimile: (630) 955-0059

  
Jean A. Stone