

FCC MAIL SECTION

Federal Communications Commission

DA 99-506

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DISPATCHED BY

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	CC Docket No. 94-129
Telecommunications Act of 1996	)	
	)	
EqualNet Corporation Request for Waiver	)	
	)	

**ORDER**

Adopted: March 12, 1999; Released: March 15, 1999

By the Chief, Common Carrier Bureau:

**I. INTRODUCTION AND BACKGROUND**

1. In its *Carrier Change Orders*,<sup>1</sup> the Commission adopted rules<sup>2</sup> applicable to carriers changing a consumer's preferred carrier. In this order we grant EqualNet Corporation (EqualNet) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders* to enable EqualNet to change the preferred carrier of those consumers currently presubscribed to Brittan Communications International, Inc. (BCI) from BCI to EqualNet.

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<sup>1</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, FCC 98-334 (released Dec. 23, 1998) (*Section 258 Order*); *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*).

<sup>2</sup> 47 C.F.R. §§ 64.1100 - 64.1190.

2. Section 258 of the Act, adopted in 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."<sup>3</sup> The goal of section 258 is to eliminate the practice of "slamming," which is the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.<sup>4</sup> In the recently issued *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.<sup>5</sup>

3. EqualNet requests a waiver of our verification rules to allow it to be designated the preferred long distance carrier for customers of BCI, which recently filed for bankruptcy, without first obtaining the customers' authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant EqualNet's petition subject to the conditions represented in its filing.

## II. DISCUSSION

4. Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>6</sup> We find that EqualNet has made a showing of good cause to grant a waiver of the requirements in the Commission's carrier change rules and orders for those consumers who have authorized BCI as their preferred carrier. EqualNet has demonstrated that special circumstances exist that would warrant a waiver. In its Petition for Waiver of Commission Rules (Waiver Petition), EqualNet states that on January 27, 1999, RFC Capital Corporation (RFC), a secured creditor of BCI, conducted a non-judicial foreclosure sale of BCI assets.

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<sup>3</sup> 47 U.S.C. § 258.

<sup>4</sup> The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

<sup>5</sup> Pursuant to these new procedures, carriers must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

<sup>6</sup> *WAT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

including BCI's customer accounts and accounts receivable.<sup>7</sup> USC Telecom, Inc., the successful bidder for the assets at the foreclosure sale, is transferring those customer accounts and accounts receivable to EqualNet, its sister corporation.<sup>8</sup> EqualNet states that under these special circumstances, a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition of BCI's customers' long distance service to EqualNet's service, at the same or better rates than those customers were receiving from BCI.

5. We also conclude that EqualNet has shown that granting its request is in the public interest. Without this waiver, BCI's customers are at risk of either losing their long distance service or of being charged substantially higher rates than those they received from BCI. Furthermore, EqualNet has agreed that if the Commission waives its rules to permit EqualNet to provide service to BCI's customers, EqualNet will investigate, respond, and cure the complaints registered against BCI promptly and accurately.<sup>9</sup> In addition, EqualNet will notify BCI's customers of the assumption of their service by EqualNet and that they will continue to be billed at the same or better rates than BCI's rates. EqualNet's notice will also advise consumers that they have the right to change their preferred carrier at any time and will instruct consumers how to do so.<sup>10</sup> We conclude that these conditions will adequately protect the rights of BCI's customers.

6. As discussed above, BCI is no longer providing long distance service and BCI's customers are at risk of either losing their long distance service or of being charged substantially higher rates than those they received from BCI. The immediate implementation of this order is therefore crucial to the Commission's efforts to ensure that customers who had chosen BCI as their preferred carrier have no disruption in their long distance rates or service.

### III. CONCLUSION AND ORDERING CLAUSES

7. For the foregoing reasons, we grant EqualNet's waiver request for the limited purposes described above. We find that allowing EqualNet to change BCI's customer's

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<sup>7</sup> Waiver Petition at 1-2.

<sup>8</sup> On October 29, 1998, the Commission issued a Notice of Apparent Liability (NAL) against BCI alleging that BCI willfully or repeatedly violated section 258 of the Act and the Commission's carrier change rules and orders by changing the designated preferred carrier of sixteen consumers without their authorization. The NAL found BCI apparently liable for a forfeiture in the amount of \$1,120,000 for these alleged unauthorized conversions. *Brittan Communications International Corp.*, Notice of Apparent Liability, FCC 98-291 (released October 29, 1998). EqualNet represents that the foreclosure sale and transfer of assets were conducted as an arms length transaction and in no way perpetuates BCI's alleged fraudulent activities.

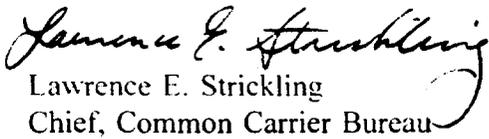
<sup>9</sup> Waiver Petition at 2-3.

<sup>10</sup> *Id.* at 3.

preferred carrier from BCI to EqualNet without first obtaining each customer's express authorization and verifying such authorization in accordance with the Commission's carrier change rules and orders serves the public interest under these special circumstances where BCI has ceased to function as a common carrier. The grant of this waiver is conditioned upon EqualNet's provision of the customer notification and complaint resolution services described above and further detailed in its petition.

8. Accordingly, pursuant to authority contained in Sections 1, 4, and 258, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the waiver request filed by EqualNet Corporation on March 11, 1999 IS GRANTED to the extent indicated herein.

9. IT IS FURTHER ORDERED that this Order is effective immediately upon release thereof.<sup>11</sup>

  
Lawrence E. Strickling  
Chief, Common Carrier Bureau

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<sup>11</sup> We find that good cause exists for this waiver to be effective immediately. *See supra* para. 6.