

FCC MAIL SECTION

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Federal Communications Commission

DA 99-1295

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

In the Matter of )
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 )
Long Distance of Michigan, Inc. Request for Waiver )
CC Docket No. 94-129

ORDER

Adopted: July 9, 1999

Released: July 9, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its Carrier Change Orders, the Commission adopted rules applicable to carriers changing a consumer's preferred carrier. In this order, we grant Long Distance of Michigan, Inc. (LDMI) a limited waiver of the authorization and verification requirements of the Commission's rules and Carrier Change Orders to enable LDMI to change the preferred carrier of those consumers currently presubscribed to American Telcom, Inc. d/b/a FoneTel (FoneTel) from FoneTel to LDMI.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 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

1 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, 14 FCC Rcd 1508 (1998) (Section 258 Order), stayed in part, MCI WorldCom v. FCC, No. 99-1125 (D.C. Cir. May 18, 1999); 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).

2 47 C.F.R. §§ 64.1100 - 64.1190.

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 subscribers.<sup>5</sup>

3. LDMI requests a waiver of our verification rules to allow it to transfer FoneTel's subscribers to LDMI's customer base without first obtaining each subscriber's authorization and verification.<sup>6</sup> Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant LDMI'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>7</sup> We find that LDMI 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 FoneTel as their preferred carrier. LDMI has demonstrated that special circumstances exist that would warrant a waiver. In its Waiver Petition, LDMI explains that FoneTel filed for Chapter 11 bankruptcy<sup>8</sup> and, on April 9, 1999, FoneTel and LDMI entered into an Asset Purchase Agreement (Agreement) under which LDMI will acquire various FoneTel assets, including their customer accounts. Under the terms of the Agreement,

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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> On June 2, 1999, LDMI filed a Petition for Waiver of Sections 64.1100-64.1190 of the Commission's Rules and Request for Expedited Treatment (Waiver Petition). On June 17, 1999, LDMI filed an Amended Petition for Waiver (Amended Waiver Petition).

<sup>7</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

<sup>8</sup> See FoneTel Bankruptcy Order, Waiver Petition, Exhibit A.

which has been approved by the Bankruptcy Court, on or around July 9, 1999, the ongoing operation and maintenance of FoneTel's customer accounts will be transferred to LDMI.

5. We also conclude that LDMI has shown that granting its request is in the public interest. LDMI states that a grant of this waiver petition will help to ensure that FoneTel's customers are seamlessly transferred to LDMI without a disruption in their service.<sup>9</sup> LDMI will notify all of FoneTel's customers of the assumption of their service by LDMI. LDMI will also notify FoneTel's customers that they will continue to be billed at the same rates and under the same terms and conditions in FoneTel's tariffs. In addition, LDMI will inform customers that they will not incur any fees in connection with the transaction and that they are free to change long distance service providers if they so choose.<sup>10</sup> LDMI states that after FoneTel's customer accounts are transferred to LDMI, customers will receive additional notifications through bill inserts. LDMI has also established a 24-hour toll free number which will be manned by customer relations personnel who are trained to answer customer inquiries. Furthermore, LDMI has agreed to resolve any complaints that have been filed against FoneTel. We conclude that these conditions will adequately protect the rights of FoneTel's customers.

6. LDMI seeks expedited treatment of its Waiver Petition to allow the sale of FoneTel's assets to LDMI to proceed on July 9, 1999, when FoneTel's customer accounts will be transferred to LDMI under the Agreement.<sup>11</sup> A prompt grant of this waiver will help to ensure that FoneTel's customer's are seamlessly transferred to LDMI without any interruption in their long distance service. We conclude, therefore, that it is in the public interest that LDMI's request for expedited treatment be granted.

### III. CONCLUSION AND ORDERING CLAUSES

7. For the foregoing reasons, we grant LDMI's waiver request for the limited purposes described above. The grant of this waiver is conditioned upon LDMI's provision of the customer notification and handling of complaints 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, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the waiver request filed by Long Distance of Michigan, Inc. on June 2, 1999, and amended on June 17, 1999, IS GRANTED to the extent indicated herein.

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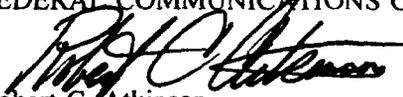
<sup>9</sup> Waiver Petition at 2-3.

<sup>10</sup> Amended Waiver Petition at 1-2.

<sup>11</sup> Waiver Petition at 5.

9. IT IS FURTHER ORDERED that this Order is effective upon its release.<sup>12</sup>

FEDERAL COMMUNICATIONS COMMISSION



Robert C. Atkinson  
Deputy Chief, Common Carrier Bureau

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<sup>12</sup> We find that it is in the public interest that this waiver be effective immediately. *See supra* para. 6.