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

DISP

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| In the Matter of |) | |
| |) | |
| Implementation of the Subscriber Carrier |) | |
| Selection Changes Provisions of the |) | CC Docket No. 94-129 |
| Telecommunications Act of 1996 |) | |
| |) | |
| Startec Global Operating and PCI |) | |
| Communication, Inc. |) | |
| Request for Waiver |) | |

ORDER

Adopted: July 23, 1999

Released: July 23, 1999

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules² applicable to carriers changing a consumer's preferred carrier. In this order, we grant Startec Global Operating Company ("Startec") and its affiliate, PCI Communications ("PCI") (collectively "petitioners"), a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders* to enable Startec and PCI to change the

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.

preferred carrier of those consumers currently subscribed to GST Telecom Pacific ("GST") from GST to PCI.³

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 toll service except in accordance with such procedures as the Commission shall prescribe."⁴ 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.⁵ 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.⁶

3. Startec and PCI jointly request a waiver of our verification rules to allow them to transfer GST's subscribers to PCI's customer base without first obtaining each subscriber's authorization and verification.⁷ Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Startec and PCI's petition subject to the conditions represented in its filing.

³ Startec has agreed to purchase GST's assets, including their customer accounts. Startec intends to transfer its assets to its affiliate, PCI. PCI provides interstate telecommunication services in the territory of Guam.

⁴ 47 U.S.C. § 258.

⁵ 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).

⁶ 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.

⁷ On July 15, 1999, Startec and PCI jointly filed a Petition for Waiver of Sections 64.1100-64.1190 of the Commission's Rules and Request for Expedited Treatment (Waiver Petition).

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.⁸ We find that Startec and PCI have 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 GST as their preferred carrier. Startec and PCI have demonstrated that special circumstances exist that would warrant a waiver. In the Waiver Petition, the petitioners explain that GST is in the process of discontinuing its service in the Territory of Guam, which would leave all of GST's subscribers without service. Startec and PCI, therefore, entered into a Purchase Agreement (Agreement) under which Startec and PCI will acquire various GST assets, including their customer accounts.

5. We also conclude that the petitioners have shown that granting its request is in the public interest. The petitioners state that a grant of this waiver petition will help to ensure that GST's customers are seamlessly transferred to PCI without a disruption in their service.⁹ The petitioners will notify all of GST's customers that their service will be assumed by PCI and that they will continue to be billed at the same rates and under the same terms and conditions as in GST's tariffs. In addition, Startec and PCI 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.¹⁰ Startec and PCI state that after GST's customer accounts are transferred to PCI, customers will receive additional notifications through bill inserts. Furthermore, Startec and PCI will take responsibility to investigate, respond, and attempt to cure any complaints of former GST customers processed after the sale. We conclude that these conditions will adequately protect the rights of GST's customers.

6. Startec and PCI seek expedited treatment of its Waiver Petition to allow the sale of GST's assets to Startec and PCI to proceed no later than July 24, 1999, when GST's customer accounts will be transferred to Startec and PCI under the Agreement. A prompt grant of this waiver will help to ensure that GST's customers are seamlessly transferred to PCI without any interruption in their long distance service. We conclude, therefore, that it is in the public interest that the petitioners' request for expedited treatment be granted.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

⁹ Waiver Petition at 5.

¹⁰ Waiver Petition at 3-4.

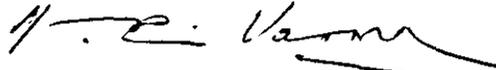
III. CONCLUSION AND ORDERING CLAUSES

7. For the foregoing reasons, we grant Startec and PCI's waiver request for the limited purposes described above. The grant of this waiver is conditioned upon their 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 Startec Global Operating Company and its affiliate, PCI Communications, Inc., on July 15, 1999, IS GRANTED to the extent indicated herein.

9. IT IS FURTHER ORDERED that this Order is effective upon its release.¹¹

FEDERAL COMMUNICATIONS COMMISSION



Yog R. Varma
Deputy Chief, Common Carrier Bureau

¹¹ We find that it is in the public interest that this waiver be effective immediately. *See supra* para. 6.