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Federal Communications Commission

DA 99-1992

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

In the Matter of)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the) CC Docket No. 94-129
Telecommunications Act of 1996)
Excel Telecommunications, Inc., et al.)
Request for Expedited Waiver)

ORDER

Adopted: September 28, 1999

Released: September 29, 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 the Petitioners a limited waiver of the authorization and verification requirements of the Commission's rules and Carrier Change Orders to enable Excel to change the preferred carrier of those consumers currently presubscribed to Dial &

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.

3 On September 8, 1999, Excel Telecommunications, Inc. (Excel) Telco Holdings, Inc. d/b/a Dial & Save (Dial & Save) and Long Distance Wholesale Club, Inc. (LDWC) (collectively, Petitioners) filed a Petition for Expedited Waiver.

Save and LDWC to Excel.⁴

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."⁵ 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.⁶ In the *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.⁷

3. The Petitioners request a waiver of our verification rules to allow them to transfer subscribers of Dial & Save and LDWC to Excel's customer base without first obtaining each subscriber's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant the Petitioners' Petition for Expedited Waiver subject to the conditions represented in their 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.⁸ We find that the Petitioners 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 Dial & Save or LDWC as their preferred carrier. The Petitioners have demonstrated that special circumstances exist

⁴ Each petitioner, Excel, Dial & Save, and LDWC, is a direct or indirect subsidiary of Excel Communications, Inc. (ECI). ECI is a holding company.

⁵ 47 U.S.C. § 258.

⁶ 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).

⁷ Pursuant to these 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.

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

that would warrant a waiver. Excel acquired Dial & Save and LDWC in November 1997 through a merger transaction. Since that time, the Petitioners have attempted to integrate their networks, customer service functions, and billing systems in an effort to achieve maximum efficiency. The Petitioners have discovered, however, that the legacy billing systems of Dial & Save and LDWC can no longer support the increasingly complex tasks required of them, nor can they reasonably be integrated into Excel's new billing system without jeopardizing its efficiency. Due to the instability and inefficiency of their legacy billing systems, Dial & Save and LDWC may have to discontinue providing service to their customers if they are not allowed to transfer those customers to Excel. This could result in those customers losing their long distance service or paying significantly higher casual calling rates. The Petitioners state that these problems can be avoided if Excel transfers the affected subscribers to its customer base. The transfer of customers to Excel will also eliminate the need for redundant billing systems originally created for Dial & Save and LDWC, which are now under common ownership.

5. We also conclude that the Petitioners have shown that granting this request is in the public interest. The Petitioners argue that granting this waiver will protect customers against the possibility of losing their long distance service or being charged potentially higher casual calling rates. The Petitioners state that a grant of this waiver petition will help to ensure that affected customers benefit from enhanced customer care and simpler, more understandable billing under the Excel brand name. The transfer will also allow Excel to offer additional products to affected customers at attractive rates. Furthermore, Excel plans to notify Dial & Save and LDWC customers that, on or about October 15, 1999, their long distance service will be automatically switched to Excel; that their rates will remain the same; that they are free to change carriers; and that there will be no charges in connection with this change. The notification letter will also inform affected customers that although their current calling cards and toll free service will be deactivated on December 1, 1999, they will be offered an Excel calling card and Excel toll free service prior to that deactivation. The notification letter will invite affected customers to visit Excel's website or dial a toll free number for more information about the transition. Excel will send another notification letter after the transition welcoming customers to Excel and informing them that they will receive the same rates that they received from Dial & Save and LDWC. Excel will also inform customers that if they are not satisfied with Excel's service within the first 90 days, Excel will pay any associated PIC change fee for the customer to change their service to another carrier. Finally, Excel has agreed to resolve any complaints filed against Dial & Save or LDWC by the affected customers.⁹

6. The Petitioners seek expedited treatment of their Waiver Petition because the transition of Dial & Save and LDWC subscribers to Excel is scheduled to take place on or about October 15, 1999. We believe that a prompt grant of this waiver will help to ensure that all affected Dial & Save and LDWC customers are transferred to Excel 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.

⁹ Supplement to Petition for Expedited Waiver at 1-2.

III. CONCLUSION AND ORDERING CLAUSES

7. For the foregoing reasons, we grant the Petitioners a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Excel's provision of customer notification and handling of customer inquiries and complaints described above and further detailed in the Petitioners' Supplement to Petition for Waiver.

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 Excel Telecommunications, Inc., Telco Holdings, Inc. d/b/a Dial & Save and Long Distance Wholesale Club, Inc. on September 8, 1999, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION



Robert C. Atkinson
Deputy Chief, Common Carrier Bureau