

FCC MAIL SECTION

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

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In the Matter of)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
Stratos Telecom, Inc. and Stratos Offshore)
Services Company Petition for Waiver)

CC Docket No. 94-129

ORDER

Adopted: March 24, 2000

Released: March 27, 2000

By the Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant Stratos Telecom, Inc. and Stratos Offshore Services Company (collectively Stratos) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders* to enable Stratos to change the preferred carrier of those consumers currently presubscribed to Shell Offshore Services Company (Shell) to Stratos.

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."³ 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

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 47 U.S.C. § 258.

distance carrier without first complying with the Commission's verification procedures.⁴ 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.⁵

3. Stratos requests a waiver of our verification rules to allow it to transfer subscribers of Shell to the Stratos customer base without first obtaining each subscriber's authorization and verification.⁶ Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant Stratos' waiver request subject to the conditions represented in their filing.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that Stratos has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Stratos to transfer to its own customer base the affected Shell customers. Pursuant to an asset purchase agreement between Stratos Global Corporation (Stratos Global)¹² and Shell, Stratos Global has agreed to purchase certain assets of Shell, including Shell's long distance customer accounts. Upon consummation of this transaction, Stratos will provide to Shell's customers the local, long distance, and international telecommunications services previously provided by Shell.

⁴ 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).

⁵ 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.

⁶ On February 9, 2000, Stratos filed a Petition for Expedited Waiver of Commission's Rules. On March 9, 2000, Stratos filed a Supplement to the Waiver Petition.

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*Wait Radio*).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *Id.* at 1159.

¹² Stratos Global is the parent company for Stratos.

6. We find that Stratos has demonstrated that a waiver of the Commission's rules under these circumstances is in the public interest. Stratos states that Shell's customer base consists of corporations, not individual consumers. Stratos and Shell believe that attempts to receive authorizations from these companies will go unanswered, thereby leaving many of Shell's current customers without long distance services currently being provided throughout the Gulf of Mexico. According to Stratos, any disruption of service to the oil and gas companies operating in the Gulf of Mexico could seriously jeopardize the health and safety of these companies' workers, as well as potentially threaten the environment.¹³

7. Because Sprint has indicated its intent to notify customers as described below, we conclude that a waiver of the authorization and verification rules is in the public interest. Stratos states that it will undertake a two-step process to notify the affected customers of the transaction.¹⁴ In a first letter, Stratos will inform customers of the transaction that will occur between Stratos and Shell. The letter will also inform customers that, upon regulatory approval, their telephone service provider will be changing from Shell to Stratos; that Stratos has no immediate plans to change the rates, terms, and conditions of the services currently being provided by Shell; and that they are free to change carriers at any time.¹⁵ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. The second letter will inform customers that Stratos received the necessary regulatory approval for the transaction and that the transaction between Shell and Stratos was, in fact, consummated. That letter will also reiterate the information that was disclosed in the first letter.¹⁶ Finally, Stratos has promised to work with Shell to investigate and resolve any outstanding customer complaints that may have been filed against Shell.¹⁷

8. For the foregoing reasons, we grant Stratos 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 Stratos' provision of customer notification and handling of customer complaints as described above and further detailed in its Waiver Petition.

¹³ Waiver Petition at 2.

¹⁴ Stratos included a draft notification letter in its petition marked as Exhibit A. As Attachment B in its supplemental filing, Stratos included a draft of the second notification letter.

¹⁵ See Waiver Petition, Exhibit A.

¹⁶ See Supplement to Petition, Attachment B.

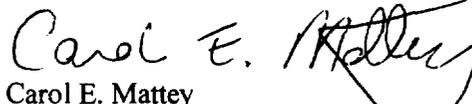
¹⁷ Supplement to Petition at 2.

III. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, 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 0.111, 0.311, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, 1.3, the waiver request filed by Stratos Telecom, Inc. and Stratos Offshore Services Company on February 9, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION


Carol E. Matthey
Deputy Chief, Common Carrier Bureau