

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of )  
)  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
)  
Broadwing Telecommunications, Inc. )  
Petition for Waiver )

CC Docket No. 94-129

DISTRICT OF COLUMBIA

APR 5 2 52 PM '00

FCC MAIL SECTION

ORDER

Adopted: March 31, 2000

Released: March 31, 2000

By the Deputy Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,<sup>1</sup> the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.<sup>2</sup> In this Order, we grant Broadwing Telecommunications, Inc. (Broadwing) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*. We grant this limited waiver to the extent necessary to enable Broadwing to change the preferred carrier of certain consumers currently presubscribed to Cincinnati Bell Long Distance, Inc. (CBLD) to Broadwing.

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

<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, 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).

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

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 *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 customers.<sup>5</sup>

3. Broadwing (formerly Eclipse Telecommunications, Inc.) requests a waiver of our verification rules to allow it to transfer certain subscribers of CBLD to the Broadwing 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 do so, we grant Broadwing’s waiver request subject to the conditions represented in its filing.

## II. DISCUSSION

4. Generally, the Commission’s rules may be waived for good cause shown.<sup>7</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>8</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> 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.

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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 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 February 2, 2000, Broadwing filed a Petition for Waiver. On March 24, 2000, Broadwing filed a Supplement to the Waiver Petition (Waiver Petition), which replaced the original filing in its entirety.

<sup>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*Wait Radio*).

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

<sup>10</sup> *Id.* at 1159.

5. We find that Broadwing 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 Broadwing to transfer to its own customer base the affected CBLD customers. Broadwing and CBLD are both providers of long distance service with authority to operate as such throughout the continental United States. On November 9, 1999, Cincinnati Bell, Inc. (the owner of CBLD) and IXC Communications, Inc. (the owner of Broadwing) merged. As a result, Broadwing and CBLD are now subsidiaries under the same holding company, Cincinnati Bell, Inc. Upon receipt of the necessary regulatory approvals, Cincinnati Bell, Inc. intends to consolidate certain of its long distance operations into Broadwing. This consolidation will include a portion of CBLD's current customer base. Specifically, Cincinnati Bell, Inc. intends to transfer the vast majority of CBLD customers located outside the Cincinnati metropolitan area to Broadwing. In addition, a small number of customers within the Cincinnati metropolitan area also will be transferred to Broadwing.

6. We find that Broadwing has demonstrated that special circumstances exist that warrant a waiver of the Commission's rules. Broadwing argues that the purpose of the Commission's verification rules would not be served by obtaining prior authorization and verification in order to switch the affected customers of CBLD to Broadwing. Granting of this Waiver Petition will permit a seamless transition of customer traffic from CBLD to Broadwing and avoid interruption of customers' existing services.<sup>11</sup>

7. Because Broadwing 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. Broadwing states that it will undertake a two-step process to notify the affected customers of the transaction.<sup>12</sup> Broadwing plans to send two notification letters to all affected customers informing them of the transaction. The first letter (pre-transaction) will inform customers that their telephone service provider will be changing; that they are free to change carriers if they are not satisfied with Broadwing, subject to any term plan discount arrangements that business customers may have with CBLD; and that, if they decide to change carriers within thirty days, Broadwing will reimburse the customer for the change charge. The affected customers will be notified that they will have the same or better rates than those they received from CBLD.<sup>13</sup> In addition, customers will be given a toll-free number to call with any questions they may have about the transition. The affected customers also will be sent a second letter (post-transaction) informing them that their interstate intraLATA service provider has changed to Broadwing. That letter also will reiterate the information disclosed in the first letter.<sup>14</sup> Finally, Broadwing has promised to work with CBLD to investigate and resolve any outstanding customer complaints that may have been made against CBLD.<sup>15</sup>

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<sup>11</sup> Waiver Petition at 3.

<sup>12</sup> Broadwing included drafts of the two notification letters in its Waiver Petition, marked as Exhibits 1 and 2.

<sup>13</sup> See Sample Customer Notification Letter (pre-transaction), Waiver Petition, Exhibit 1; Waiver Petition at 2.

<sup>14</sup> See Sample Customer Notification Letter (post-transaction), Waiver Petition, Exhibit 2; Waiver Petition at 2.

<sup>15</sup> Waiver Petition at 2.

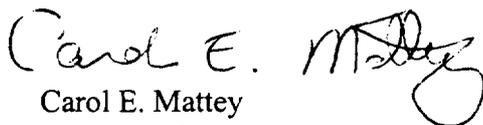
8. For the foregoing reasons, we grant Broadwing a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Broadwing's provision of customer notification and handling of customer complaints as described above and further detailed in its Waiver Petition.

### 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 Broadwing Telecommunications, Inc. on February 2, 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. Mathey  
Deputy Chief, Common Carrier Bureau