

FCC MAIL SECTION

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

DISPATCHED BY

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	CC Docket No. 94-129
Telecommunications Act of 1996	)	
	)	
IDT Corporation and IDT America, Corp.	)	
Petition for Waiver	)	

**ORDER**

Adopted: May 1, 2000

Released: May 2, 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 IDT Corporation and IDT America Corp. (collectively, IDT) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.<sup>3</sup> This waiver will enable IDT to become the preferred carrier of those consumers currently presubscribed to MCI WorldCom, Inc. (MCIW) without first obtaining the consumers' authorization and verification.

<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), reconsideration pending; *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.

<sup>3</sup> On January 28, 2000, IDT filed a Petition for Waiver of Commission's Rules relating to its acquisition of selected customers of MCI WorldCom, Inc. (Waiver Petition). On March 13, 21, and 30, 2000, IDT filed a First, Second, and Third Supplement to the Waiver Petition, respectively.

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."<sup>4</sup> The goal of section 258 is to eliminate the practice of "slamming," 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>5</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 consumers.<sup>6</sup>

3. IDT seeks a waiver of our verification rules to allow it to be designated the preferred long distance carrier for certain customers of MCIW 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 IDT a waiver 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

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<sup>4</sup> 47 U.S.C. § 258.

<sup>5</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>6</sup> Pursuant to these procedures, a carrier 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>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (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> *WAIT Radio*, 418 F.2d at 1157.

circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>11</sup>

5. We find that IDT 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 IDT to transfer to its own customer base the affected MCIW customers. IDT is a reseller of interexchange services. In 1994, MCIW and IDT entered into a Rebiller Services Agreement whereby IDT served as MCIW's agent for marketing and solicitation of customers for telecommunications services that were being provided by MCIW. Pursuant to a subsequent agreement between IDT and MCIW, IDT will no longer be an agent of MCIW, and MCIW will discontinue providing interexchange services to customers that it acquired through IDT's marketing efforts. These MCIW customers will be transferred to IDT's customer base. IDT states that, upon receipt of the necessary regulatory approvals, its underlying service will be provided by a carrier other than MCIW.<sup>12</sup> Upon consummation of this transaction, IDT will provide interstate, intraLATA toll, and international telecommunications services to the affected customers.

6. In its Waiver Petition, IDT argues that requiring it to obtain authorization and verification from each of the approximately 53,000 customers before it can begin providing service to them could delay their transfer to IDT, interrupt their service, and preclude their ability to make interexchange and international calls. IDT states that a waiver of the authorization and verifications rules will enable the affected MCIW customers to be transferred to IDT's customer base without this possible disruption in their service.<sup>13</sup> IDT also explains that the affected customers have a pre-existing and ongoing relationship with IDT.<sup>14</sup> Therefore, upon receipt of the necessary regulatory approvals, the underlying carrier will change from MCIW to another carrier, but IDT will continue to have a direct relationship with those customers who are already familiar with IDT.<sup>15</sup> IDT emphasizes that MCIW is cooperating with IDT to ensure that service to the affected customers will not be interrupted or discontinued.<sup>16</sup> We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers, and therefore that special circumstances exist to justify a waiver.

7. Because IDT has indicated its intent to notify customers of the proposed transaction as described below, we find that IDT has demonstrated that a limited waiver of the Commission's carrier authorization and verification rules is in the public interest. IDT states that

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<sup>11</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>12</sup> Third Supplement to Petition for Waiver of Commission Rules (Third Supplement) at 2.

<sup>13</sup> Waiver Petition at 4.

<sup>14</sup> Third Supplement at 2.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

it will undertake a two-step notification process to notify the affected customers of the transaction.<sup>17</sup> In a first letter, IDT will inform customers of the proposed transaction and assure them that no charges or rate increases will be imposed as a result of the transfer. IDT states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.<sup>18</sup> In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to IDT, once the transfer has been effected, it will notify customers of that event and reiterate the foregoing information, assurances, and advice.<sup>19</sup> Finally, IDT has promised to work with MCIW to investigate and resolve any outstanding customer complaints that may have been filed against MCIW.<sup>20</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of MCIW.

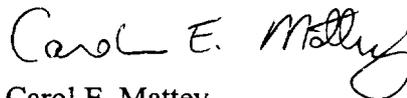
8. For the foregoing reasons, we grant IDT a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon IDT's provision of customer notification and handling of customer complaints, as described above and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

### III. ORDERING CLAUSES

9. 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 0.111, 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 IDT Corporation and IDT America Corp. on January 28, 2000, and supplemented on March 13, 21, and 30, 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

<sup>17</sup> IDT included a notification letter in its Second Supplement to Petition for Waiver of Commission Rules (Second Supplement) marked as Exhibit A. As Attachment B in its Second Supplement, IDT included a second notification letter.

<sup>18</sup> Second Supplement, Exhibit A.

<sup>19</sup> Second Supplement, Exhibit B.

<sup>20</sup> Second Supplement, Exhibit C.