

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

In the Matter of
Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996
MCI WorldCom, Inc.
TTI National, Inc.
Petition for Waiver

CC Docket No. 94-129

Vertical stamps: JUL 7 6 35 PM '00, FCC MAIL SECTION

ORDER

Adopted: June 26, 2000

Released: June 27, 2000

By the Chief, Accounting Policy Division, 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 MCI WorldCom, Inc. (MCI WorldCom) and its subsidiary, TTI National, Inc. (TTI National), 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 TTI National to become

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); First Order on Reconsideration, FCC 00-135 (released May 3, 2000); 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). We refer to these orders collectively as the Carrier Change Orders.

2 47 C.F.R. §§ 64.1100 - 64.1190.

3 On April 11, 2000, MCI WorldCom, on behalf of its wholly-owned subsidiary, TTI National, filed a Petition for Expedited Waiver of Commission Rules relating to TTI National's acquisition of the customer bases of National Tele-Communications, Parcel Consultants, Inc. Minimum Rate Pricing, Inc., and Discount Call Rating, Inc. (collectively, "MRP") (Waiver Petition).

the preferred carrier of consumers currently presubscribed to MRP without first obtaining the consumers' authorization and verification.

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," 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 *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. MCI WorldCom seeks a waiver of our verification rules to allow TTI National to be designated the preferred long distance carrier for customers of MRP without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant MCI WorldCom a waiver, subject to the conditions represented in its filings.

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

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 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.

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).

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

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 MCI WorldCom 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 TTI National to transfer to its own customer base the MRP customers. In the Waiver Petition, MCI WorldCom states that TTI National will acquire substantially all of the assets of MRP, including, but not limited to, long distance customer accounts, which have selected MRP as their preferred carrier for outbound, inbound, and calling card services. MRP sold its assets to TTI National in a public auction, pursuant to section 363 of the Bankruptcy Code, as a part of its liquidation of assets to satisfy creditors in the ongoing action in bankruptcy.¹² Upon transfer of the affected customers, TTI National will provide intrastate, interstate, and international interexchange services (including calling card services) on a presubscription basis to the former customers of MRP.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former MRP customers might temporarily lose service when MRP ceases to provide service or pay potentially higher casual calling rates. 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.

7. We find that MCI WorldCom has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because TTI National and MRP have agreed to notify the affected customers as described below. MCI WorldCom states that the parties will undertake a two-step process to notify the affected customers of the transaction. In a first letter, MRP, in cooperation with TTI National, will inform customers of the proposed transaction, and assure them that no charges or rate increases will be imposed as a result of the transaction.¹³ MCI WorldCom states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.¹⁴ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to MCI WorldCom, once the proposed sale has been consummated, TTI National will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁵ MCI WorldCom has agreed that, if the Commission waives its rules to

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

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

¹² Waiver Petition at 2.

¹³ MCI WorldCom filed sample notification letters. *See* Waiver Petition, Attachments, Sample Letters (Notification Letters).

¹⁴ Waiver Petition at 3.

¹⁵ *See* Notification Letters.

permit TTI National to provide service to MRP's customers, TTI National will investigate and resolve any outstanding customer complaints regarding services provided by MRP.¹⁶ We conclude that these conditions will adequately protect the rights of the transferred customers of MRP.

8. We note that MRP, the carrier selling its customer base in this instance, has a history of delinquency in its contributions to the Universal Service Fund. Carriers pay into the Fund in order to provide financial support for various programs, including the High Cost, Schools and Libraries, and Rural Health Care programs. These programs were established by the Commission under Section 254 of the Communication Act of 1934, as amended, and are administered by the Universal Service Administration Company, in order to ensure the delivery of affordable telecommunications service to all Americans.¹⁷ While we recognize the undue burden that delinquent carriers like MRP put on the Universal Service Fund, we believe that transferring MRP's customer base to TTI National, a responsible carrier contributing to the Fund as required under the Commission's rules, would be in the public interest.

9. For the foregoing reasons, we grant MCI WorldCom, on behalf of TTI National, 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 TTI National and MRP's provision of customer notification and handling of customer complaints, as described above and further detailed in the Waiver Petition.

III. ORDERING CLAUSES

10. 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,

¹⁶ See Waiver Petition at 4.

¹⁷ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed, reversed, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*Universal Service Order*).

0.291, 1.3, the waiver request filed by grant MCI WorldCom, Inc. and its subsidiary, TTI National, Inc., on April 11, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Irene M. Flannery
Chief, Accounting Policy Division, Common Carrier Bureau