

FCC MAIL SECTION

Jul 28 7 55 AM '00
 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)
)
 Spectra Communications Group, LLC)
 GTE Midwest, Inc.)
 Petition for Waiver)

ORDER**Adopted: July 27, 2000****Released: July 28, 2000**

By the Chief, Accounting Policy Division, 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 Spectra Communications Group, LLC (Spectra) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited

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); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 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 May 11, 2000, Spectra filed a Petition for Waiver of Commission Rules relating to Spectra's acquisition of the local and intraLATA toll customer bases of GTE Midwest, Inc. (GTE) (Waiver Petition). On June 14, 2000, Spectra supplemented the Waiver Petition and supplied copies of customer notification letters (Exhibits A, B, C, and D) (Supplement).

waiver to the extent necessary to enable Spectra to become the preferred carrier of consumers currently presubscribed to GTE, 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. Spectra seeks a waiver of the Commission's verification rules to allow Spectra to be designated the preferred local and intraLATA toll carrier for customers of GTE without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant Spectra 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

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*, 14 FCC Rcd at 1593-1594, 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).

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 Spectra 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 Spectra to transfer to its own customer base the affected GTE customers. In the Waiver Petition, Spectra states that it is purchasing 107 GTE local exchanges containing lines located in Missouri. Spectra will acquire substantially all of GTE's assets used to provide local and intraLATA toll telecommunications services to those exchanges, including the customer base, and will provide service to those customers under the brand name, "CenturyTel".¹² Spectra will provide local and intrastate services on a presubscription basis to GTE's former customers.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former GTE customers might temporarily lose service when GTE ceases to provide service in the affected exchanges. 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 Spectra 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, and because Spectra has agreed to notify the affected customers as described below. Spectra states that it will undertake a two-step process to notify the affected customers of the transaction, with GTE sending separate notification letters pursuant to its application to sell exchanges under 47 U.S.C. § 214.¹³ In a first letter, Spectra will inform customers of the proposed transaction, and assure them that no charges or rate increases for intraLATA toll service will be imposed as a result of the transaction.¹⁴ Spectra states that it will also advise the affected customers that they can choose a different preferred carrier, where available, should they desire to do so. In addition, customers will be given a toll-free number to call with any questions they may have about the transition.¹⁵ According to Spectra, once the proposed sale has been consummated, Spectra will notify these customers of that event through a welcome letter, reiterating the foregoing information, assurances, and advice.¹⁶ We conclude that these

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 Waiver Petition at 3-4.

¹⁴ Spectra filed sample notification letters. *See* Supplement, Exhibits A, B, C, and D. (Notification Letters).

¹⁵ Waiver Petition at 3-4.

¹⁶ *See* Notification Letters.

conditions will adequately protect the rights of the transferred customers of GTE.¹⁷

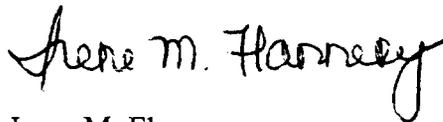
8. For the foregoing reasons, we grant Spectra a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Spectra's provision of customer notification, as described above and further detailed in the Waiver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

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 0.91, 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 Spectra Communications Group, LLC on May 11, 2000, and supplemented on June 14, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION



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

¹⁷ In addition, we note that Spectra has committed to resolve, in cooperation with GTE as necessary, customer complaints that come in after the transfer. See Supplement at 1-2.