

Federal Communications Commission

DA 00-1690

FCC MAIL SECTION

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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)
)
U S WEST Communications, Inc.)
The Rye Telephone Company)
Joint 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 U S WEST Communications, Inc. (U S WEST) and The Rye Telephone Company (Rye) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the extent necessary to enable Rye to become the

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 World Com 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 March 24, 2000, U S WEST and Rye filed a Joint Petition for Waiver of Commission Rules relating to U S WEST's transfer to Rye of approximately 94 access lines in Pueblo, Colorado (Waiver Petition). On May (continued....)

preferred carrier of consumers currently presubscribed to U S WEST, 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. U S WEST and Rye seek a waiver of our verification rules to allow Rye to be designated the preferred local carrier for customers of U S WEST 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 U S WEST and Rye a waiver, subject to the conditions represented in their 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

17, 2000, U S WEST and Rye supplemented the Waiver Petition (Supplement I) and supplied additional information relating to the transaction, a copy of a customer notification letter (Exhibit A), and a draft customer welcome letter (Exhibit B). On June 2, 2000, U S WEST and Rye supplemented the Waiver Petition (Supplement II) and provided an updated draft customer welcome letter (Exhibit A).

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

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 U S WEST and Rye have demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Rye to transfer to its own customer base the affected U S WEST customers. In the Waiver Petition, U S WEST and Rye state that, as part of a boundary change, U S WEST is transferring to Rye approximately 94 access lines located in Pueblo, Colorado. Rye will acquire substantially all of U S WEST's assets used to provide local telecommunications services to those lines, including the affected customer base, and will provide local services on a presubscription basis to U S WEST's former customers.¹² U S WEST and Rye state that the boundary change will result in reduction of the monthly local service rates paid by the affected customers and will also bring them more reliable service because Rye plans to convert these customers to digital architecture.¹³ U S WEST and Rye note that the transaction will require the affected customers to change their telephone numbers due to the change in service from U S WEST's switch location to Rye's, but that the customers will not be charged for the number change and, for a period of time, will also have a recording announcing their new numbers placed on their old lines for free.¹⁴ U S WEST and Rye further note that some of the U S WEST customers may have to change long distance carriers (intrastate or interstate), if they currently use a carrier not present on Rye's switch.¹⁵

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former U S WEST customers might temporarily lose their presubscribed local service when U S WEST ceases to provide such 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 local service to the transferred customers.

7. We find that U S WEST and Rye have demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing local service, and because U S WEST and Rye have agreed to notify the

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

¹⁰ *WAT Radio*, 418 F.2d at 1157.

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

¹² Waiver Petition at 2.

¹³ Waiver Petition at 3 and Supplement I, Exhibit A.

¹⁴ *See id.*

¹⁵ *See id.*

affected customers as described below. U S WEST and Rye state that a two-step process to notify the affected customers of the transaction has already begun, with U S WEST sending notification letters pursuant to its applications to sell the exchanges under the Colorado Statutes of Regulation of Rates and Changes, Article 3, 40-3-104.¹⁶ According to U S WEST and Rye, once the proposed sale has been consummated, Rye will send these customers a “welcome letter” notifying them of that event, and assuring them that no charges or rate increases for local service will be imposed as a result of the transaction.¹⁷ In the welcome letter, Rye will advise the affected customers that the transfer of their local service may require them to change their intra-state and/or interstate long distance carrier if those carriers are not present on Rye’s switch. The letter will also promise that a Rye representative will call each customer in that situation to coordinate a switch to another long distance carrier at no charge.¹⁸ In addition, the welcome letter will provide customers with a toll-free number to call with any questions they may have about the transition.¹⁹ We conclude that these conditions will adequately protect the rights of U S WEST’s transferred customers.²⁰

8. For the foregoing reasons, we grant U S WEST and Rye 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 U S WEST’s and Rye’s provision of customer notification, as described above and further detailed in the Waiver Petition and Supplements.

III. ORDERING CLAUSES

¹⁶ See Supplement I at I. Exhibit A.

¹⁷ See Supplement II, Exhibit A.

¹⁸ See *id.*

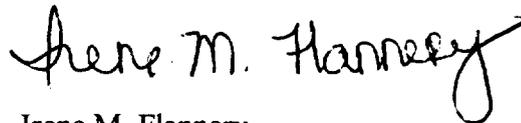
¹⁹ See *id.*

²⁰ In addition, we note that Rye’s welcome letter states that it will be responsible for all customer service issues. See Supplement II. Exhibit A.

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 joint waiver request filed by U S WEST Communications, Inc. and The Rye Telephone Company on March 24, 2000, and supplemented on May 17, 2000 and June 2, 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

