

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

2000 OCT 31 P 11:34

In the Matter of )  
)  
)  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
)  
RCN Telecom Services of Illinois, Inc., f/k/a )  
21<sup>st</sup> Century Telecom Group, Inc., )  
21<sup>st</sup> Century Telecom Group, Inc., )  
21<sup>st</sup> Century Telecom of Illinois, Inc., )  
OnePoint Communications Corp., and )  
OnePoint Communications-Illinois, L.L.C. )  
Petition for Waiver )

CC Docket No. 94-129

FILED

**ORDER**

**Adopted: October 26, 2000**

**Released: October 27, 2000**

By the Associate Chief, Accounting Policy Division, 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 RCN Telecom Services

<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); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 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*.

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

of Illinois, Inc., f/k/a 21<sup>st</sup> Century Telecom Group, Inc., 21<sup>st</sup> Century Telecom Group, Inc., 21<sup>st</sup> Century Telecom of Illinois, Inc. (collectively, RCN/21<sup>st</sup> Century Telecom), OnePoint Communications Corp., and OnePoint Communications-Illinois, L.L.C. (collectively, OnePoint) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.<sup>3</sup> We grant this limited waiver to the extent necessary to enable RCN/21<sup>st</sup> Century Telecom to become the preferred carrier of the consumers currently presubscribed to OnePoint, 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."<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 preferred 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. RCN/21<sup>st</sup> Century Telecom and OnePoint seek a waiver of our verification rules to allow RCN/21<sup>st</sup> Century Telecom to be designated the preferred local and/or long distance carrier for the affected customers of OnePoint 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 RCN/21<sup>st</sup> Century Telecom and OnePoint a waiver, subject to the conditions represented in their filings.

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<sup>3</sup> On August 30, 2000, 21<sup>st</sup> Century Telecom of Illinois, Inc., OnePoint Communications Corp., and OnePoint Communications-Illinois, L.L.C. filed a Petition for Waiver of the Commission's Rules relating to 21<sup>st</sup> Century Telecom's acquisition of the customer base of OnePoint Communications-Illinois, L.L.C. (Waiver Petition). On October 17, 2000, 21<sup>st</sup> Century Telecom filed a Petition for Waiver Supplement (Supplement), which provides, among other things, further information concerning its corporate restructuring and name change. See ¶ 5, *infra*. The Supplement also includes as Petitioners RCN Telecom Services of Illinois, Inc., f/k/a 21<sup>st</sup> Century Telecom Group, Inc., and 21<sup>st</sup> Century Telecom Group, Inc.

<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.

## 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.<sup>11</sup>

5. We find that RCN/21<sup>st</sup> Century Telecom and OnePoint 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 RCN/21<sup>st</sup> Century Telecom to transfer to its own customer base the affected OnePoint local and/or long distance customers. OnePoint's customer base consists of residents of apartment communities in Chicago, Illinois.

6. In the Waiver Petition, RCN/21<sup>st</sup> Century Telecom and OnePoint state that, on June 16, 2000, 21<sup>st</sup> Century Cable, a wholly-owned subsidiary of 21<sup>st</sup> Century Telecom, entered into an asset purchase agreement with OnePoint.<sup>12</sup> Pursuant to this agreement, certain OnePoint subscribers were to be transferred to 21<sup>st</sup> Century Cable's fellow subsidiary, 21<sup>st</sup> Century Telecom of Illinois, Inc., a certificated, facilities-based provider of telephone services in Chicago, Illinois.<sup>13</sup> 21<sup>st</sup> Century Cable and OnePoint also agreed, pursuant to a Transition Services Agreement, that OnePoint would continue to provide telephone service to the affected subscribers for an interim period of up to 180 days, or until either the subscriber had executed a Letter of Authorization (LOA) consenting to the transfer or this Commission had granted a waiver.<sup>14</sup> On October 1, 2000, the 21<sup>st</sup> Century Telecom subsidiaries merged into their parent company, 21<sup>st</sup> Century Telecom Group, Inc. Pursuant to the merger, 21<sup>st</sup> Century Telecom Group, Inc. assumed the operations of its subsidiaries.<sup>15</sup>

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<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).

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

<sup>10</sup> *WAIT Radio*, 418 F.2d at 1157.

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

<sup>12</sup> Waiver Petition at 3-4.

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

<sup>14</sup> Waiver Petition at 5.

<sup>15</sup> Waiver Petition at 2-4; Supplement at 2-3.

7. According to the Waiver Petition, on May 1, 2000, RCN Corporation acquired 21<sup>st</sup> Century Telecom Group, Inc. and its subsidiaries.<sup>16</sup> RCN and its subsidiaries are in the process of building high-speed, high capacity advanced fiber optic networks to provide a package of services, including local and long distance telephone, video programming, and data services to residential customers.<sup>17</sup> 21<sup>st</sup> Century Telecom of Illinois has filed a request with the Illinois Commerce Commission (ICC) to surrender its certificates of authority, while 21<sup>st</sup> Century Telecom Group, Inc. has applied to the ICC for authority to provide local exchange and interexchange telecommunications services in Illinois.<sup>18</sup> At a hearing the ICC conducted on September 12, 2000, a 21<sup>st</sup> Century Telecom representative advised the ICC that, upon approval of the surrender and application, 21<sup>st</sup> Century Telecom Group, Inc. will change its name to RCN Telecom Services of Illinois, Inc. According to RCN/21<sup>st</sup> Century Telecom, the ICC recommended approval of both the surrender and the application; however, an order has not yet been issued.<sup>19</sup> Once the regulatory approvals have been received, RCN Telecom Services of Illinois, Inc. will be the provider of local exchange and interexchange services for the affected OnePoint subscribers.<sup>20</sup>

8. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former OnePoint customers might temporarily be interrupted when OnePoint ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. 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.

9. We find that RCN/21<sup>st</sup> Century Telecom and OnePoint 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 service or paying significantly higher rates, and because RCN/21<sup>st</sup> Century Telecom and OnePoint have agreed to notify the affected customers as described below. RCN/21<sup>st</sup> Century Telecom and OnePoint state that they will undertake a two-step process to notify the affected customers of the transfer. To meet state requirements, RCN/21<sup>st</sup> Century Telecom and OnePoint have already sent a letter informing customers of the proposed transfer and assuring them that no charges or rate increases will be imposed as a result of the transfer.<sup>21</sup> RCN/21<sup>st</sup> Century Telecom and OnePoint state that they have also advised the affected customers that they may choose a different preferred carrier, should they desire to do

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<sup>16</sup> Waiver Petition at 3, n.3.

<sup>17</sup> Waiver Petition at 3, n. 3.

<sup>18</sup> Supplement at 2.

<sup>19</sup> Supplement at 2.

<sup>20</sup> Supplement at 2.

<sup>21</sup> RCN/21<sup>st</sup> Century Telecom filed sample notification letters. See Supplement, Exhibits A and B (Notification Letters); Supplement at 3.

so.<sup>22</sup> In addition, customers were given a toll-free number to call with any questions they may have about the transition.

10. According to RCN/21<sup>st</sup> Century Telecom and OnePoint, once the proposed transfer has been consummated, RCN/21<sup>st</sup> Century Telecom and OnePoint will notify these customers of that event and reiterate the foregoing information, assurances, and advice.<sup>23</sup> As part of this second notification, RCN/21<sup>st</sup> Century Telecom states that it will advise OnePoint subscribers that, in almost all cases, the rates for RCN/21<sup>st</sup> Century Telecom's services will be the same or lower than those charged by OnePoint.<sup>24</sup> RCN/21<sup>st</sup> Century Telecom will also explain the exceptional circumstances under which a OnePoint subscriber might be subject to higher rates if served by RCN/21<sup>st</sup> Century Telecom.

11. RCN/21<sup>st</sup> Century Telecom states that OnePoint subscribers pay a flat rate of \$24.75 for local telephone service, which includes an unlimited number of local calls in the Chicago area. Additional charges apply for "ala carte" features, such as Call Waiting, Three-Way Calling and Voice Mail. RCN/21<sup>st</sup> Century Telecom states that, while it does not provide a flat rate local calling usage plan, it does provide its customers with three calling usage plans at competitive rates.<sup>25</sup> RCN/21<sup>st</sup> Century Telecom asserts that a OnePoint subscriber using RCN/21<sup>st</sup> Century Telecom's Talk 100 Plan (the plan most similar to the OnePoint flat rate plan) would have to make 291 local calls in a month to incur charges equal to the \$24.75 OnePoint flat rate plan.<sup>26</sup> If the subscriber used one additional RCN/21<sup>st</sup> Century Telecom service (e.g., cable modem, cable, or long distance), RCN/21<sup>st</sup> Century Telecom states that the subscriber would have to make 309 calls in a month to exceed the \$24.75 OnePoint flat rate.<sup>27</sup> Although RCN/21<sup>st</sup> Century Telecom believes that this situation is unlikely to occur, it has agreed to provide a refund to all customers who incur higher charges after they are switched to RCN/21<sup>st</sup> Century Telecom. The refund will be offered for the first two billing cycles after the change in service provider, and will represent the difference between the higher RCN/21<sup>st</sup> Century Telecom bill and the amount of the subscriber's most recent OnePoint bill.<sup>28</sup> RCN/21<sup>st</sup> Century Telecom states that it will explain the refund to the affected OnePoint subscribers by phone, billing insert, or both and will

<sup>22</sup> Waiver Petition at 6; Supplement at 3.

<sup>23</sup> Waiver Petition at 6; Notification Letters; Supplement at 3.

<sup>24</sup> Supplement at 3.

<sup>25</sup> Supplement at 4; Exhibit C. RCN/21<sup>st</sup> Century Telecom states that it starts with the same pricing as Ameritech for these services and then applies an automatic 15% discount to Ameritech's rates. This discount applies to local telephone service and all features, such as Voice Mail, Caller ID, and Call Waiting. RCN/21<sup>st</sup> Century Telecom maintains that it provides an additional 5% discount off the local telephone service for each additional product the customer purchases (e.g., long distance telephone service, cable television, and/or cable modem service).

<sup>26</sup> Supplement at 4-5.

<sup>27</sup> See n. 24, *supra*.

<sup>28</sup> Supplement at 5.

advise them of their right to select another carrier. RCN/21<sup>st</sup> Century Telecom also will tell the affected OnePoint subscribers that, if they decide to stay with RCN/21<sup>st</sup> Century Telecom, there will be no further refunds after this grace period, and they will be expected to pay their bill based on RCN/21<sup>st</sup> Century Telecom's rates.<sup>29</sup>

12. In addition, RCN/21<sup>st</sup> Century Telecom and OnePoint have agreed that, if the Commission waives its rules to permit RCN/21<sup>st</sup> Century Telecom to provide service to OnePoint's former customers, RCN/21<sup>st</sup> Century Telecom and OnePoint will work with the complainants and the Commission to investigate and resolve any outstanding customer complaints regarding services provided by OnePoint.<sup>30</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of OnePoint.

13. For the foregoing reasons, we grant RCN/21<sup>st</sup> Century Telecom and OnePoint 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 the provision by RCN/21<sup>st</sup> Century Telecom and OnePoint of customer notification and, if necessary, customer refunds, and upon the handling of customer complaints, as described above and further detailed in the Waiver Petition and Supplement.

### III. ORDERING CLAUSES

14. 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 RCN Telecom Services of Illinois, Inc., f/k/a 21<sup>st</sup> Century Telecom Group, Inc., 21<sup>st</sup> Century Telecom Group, Inc., 21<sup>st</sup> Century Telecom of Illinois, Inc., OnePoint Communications Corp., and OnePoint Communications-Illinois, L.L.C. on August 30, 2000, and supplemented on October 17, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

*K. Michele Walters*

K. Michele Walters  
Associate Chief,  
Accounting Policy Division,  
Common Carrier Bureau

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<sup>29</sup> Supplement at 5.

<sup>30</sup> Waiver at 6.