

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

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In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
21st Century Telecom Services, Inc., RCN)
Telecom Services of Illinois, Inc., f/k/a 21st)
Century Telecom Group, Inc.,)
21st Century Telecom of Illinois, Inc.)
)
Petition for Waiver)
)
)

CC Docket No. 94-129

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ORDER

Adopted: December 4, 2000

Released: December 5, 2000

By the Associate 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 21st Century Telecom

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), 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*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

Services, Inc. (21st Century Telecom), RCN Telecom Services of Illinois, Inc., f/k/a 21st Century Telecom Group, Inc. (RCN), 21st Century Telecom of Illinois, Inc. (21st Century Telecom Illinois) (collectively, Petitioners) 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 Petitioners to become the preferred carrier of the consumers currently presubscribed to Wedgewood Communications Company (Wedgewood), 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. Petitioners seek a waiver of our verification rules to allow Petitioners to be designated the preferred local and/or long distance carrier for the affected customers of Wedgewood 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 Petitioners a waiver, subject to the conditions represented in their filings.

³ On November 6, 2000, 21st Century Telecom Services, Inc., RCN Telecom Services of Illinois, Inc., f/k/a 21st Century Telecom Group, Inc., and 21st Century Telecom of Illinois, Inc. filed a Petition for Expedited Waiver relating to the acquisition by 21st Century Telecom, RCN, and 21st Century Illinois of the customer base of Wedgewood Communications Company. (Waiver Petition).

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. § 64.1120(c).

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 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 Petitioners 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 Petitioners to transfer to their own customer base the affected Wedgewood local and/or long distance customers. Wedgewood's customer base consists of residents of apartment communities in Chicago, Illinois.

6. In the Waiver Petition, Petitioners state that 21st Century Telecom and Wedgewood have entered into an asset purchase agreement under which 21st Century Telecom will acquire all of the assets of Wedgewood, including, but not limited to, Wedgewood's local and long distance customers located in Chicago, Illinois and the use of Wedgewood's trade name, billing systems, and network facilities.¹² This agreement is scheduled to close on November 30, 2000. In order to prevent the Wedgewood subscribers from losing service after the transaction closes, Petitioners plan to provide service to the Wedgewood subscribers using the Wedgewood trade name and billing system, beginning in December 2000.¹³ Petitioners assert that the Wedgewood subscribers will also continue to receive telephone service over the Wedgewood network facilities, subject to the same rates, terms, and conditions.¹⁴

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).

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 3. According to the Waiver Petition, 21st Century Telecom and Wedgewood have agreed that 21st Century Telecom's subsidiary, 21st Century Illinois, will provide local and interexchange telephone service to the Wedgewood subscribers. 21st Century Illinois is a certificated, facilities-based provider of telephone services in Chicago, Illinois. *Id.* at 4. On October 1, 2000, the 21st Century Telecom subsidiaries merged into their parent company, 21st Century Telecom Group, Inc. Subsequently, RCN Telecom Services of Illinois, Inc. assumed the operations of 21st Century Telecom and its subsidiaries. *Id.* at 1, n.1, 2, 4, n.6.

¹³ Waiver Petition at 3-5.

¹⁴ Waiver Petition at 3.

7. To maximize administrative efficiencies and eliminate any customer confusion, Petitioners ultimately would like to stop using the Wedgewood trade name and serve the Wedgewood subscribers under the RCN name. Thus, Petitioners request expedited treatment of their waiver request to assure that all the Wedgewood subscribers continue to receive presubscribed local and/or long distance service after the discontinuance of the Wedgewood trade name.¹⁵

8. According to the Waiver Petition, 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.¹⁶ To effectuate the merger and corporate restructuring,¹⁷ 21st Century Telecom Illinois has filed a request with the Illinois Commerce Commission (ICC) to surrender its certificates of authority, and RCN has applied to the ICC for authority to provide local exchange and interexchange telecommunications services in Illinois.¹⁸ Once the regulatory approvals have been received, RCN will be the provider of local exchange and interexchange services for the affected Wedgewood subscribers.¹⁹

9. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former Wedgewood customers might temporarily be interrupted when Wedgewood 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.

10. We find that Petitioners 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 Petitioners have agreed to notify the affected customers as described below. Specifically, Petitioners state that they will undertake a two-step process to notify the affected customers of the transfer. To meet state requirements, Petitioners 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.²⁰ Petitioners state that they have also advised the affected customers that they may choose a different preferred carrier, should they desire to do so.²¹ In addition, customers were

¹⁵ Waiver Petition at 4.

¹⁶ Waiver Petition at 2, n. 3.

¹⁷ See also n.12, *supra*.

¹⁸ Waiver Petition at 2-3.

¹⁹ Waiver Petition at 3.

²⁰ Petitioners filed sample notification letters. See Waiver Petition, Exhibits A and B (Notification Letters).

²¹ Waiver Petition at 6.

given a toll-free number to call with any questions they may have about the transition.

11. According to Petitioners, once the proposed transfer has been consummated, Petitioners will notify these customers of that event and reiterate the foregoing information, assurances, and advice.²² In addition, Petitioners have agreed that, if the Commission waives its rules to permit Petitioners to provide service to Wedgewood's former customers, Petitioners will work with the complainants and the Commission to investigate and resolve any outstanding complaints regarding services provided by Wedgewood.²³ We conclude that these conditions will adequately protect the rights of the transferred customers of Wedgewood.

12. For the foregoing reasons, we grant Petitioners 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 Petitioners of customer notification and upon the handling of complaints, as described above and further detailed in the Waiver Petition.

III. ORDERING CLAUSES

13. 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 21st Century Telecom Services, Inc., RCN Telecom Services of Illinois, Inc., f/k/a 21st Century Telecom Group, Inc., and 21st Century Telecom of Illinois, Inc. on November 6, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters

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Associate Chief,
Accounting Policy Division,
Common Carrier Bureau

²² Waiver Petition at 6-7; Notification Letters.

²³ Waiver Petition at 7.