

MAIL ROOM

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

2000 DEC 15 P 3:19

In the Matter of)
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)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the)
Telecommunications Act of 1996)
)
)
Bell Atlantic Communications, Inc., d/b/a)
Verizon Long Distance, and NYNEX Long)
Distance, Inc., d/b/a Verizon Enterprise)
Solutions)
)
)
Petition for Waiver)

CC Docket No. 94-129

ORDER

Adopted: December 12, 2000

Released: December 13, 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 Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance (VLD), and NYNEX Long Distance, Inc.,

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*, 15 FCC Rcd 8158 (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, 15 FCC Rcd 15966 (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.

d/b/a Verizon Enterprise Solutions (VES) (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 certain consumers currently presubscribed to VSS, VHI, and VES, 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 long distance carriers for certain customers of VSS, VHI, and VES, 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 October 27, 2000, VLD and VES filed a Petition for Waiver relating to the transfer of certain customers from Verizon Select Services, Inc. (VSS), Verizon Hawaii International, Inc. (VHI), and VES to VLD, and from VSS and VHI to VES (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 respective customer bases the affected VSS, VHI, and VES long distance customers. According to the Waiver Petition, as a result of two corporate mergers, four different affiliates of Verizon Communications Inc. (Verizon) provide overlapping long distance services in certain market areas.¹² Verizon plans to streamline its operations and service offerings in these areas and to consolidate its long distance operations in the two petitioners, VES and VLD.¹³ Specifically, Petitioners state that, once they have received the required regulatory approvals, they will transfer the large business customers of VSS and VHI to VES, and the residential and general business customers of VSS, VHI, and VES to VLD.¹⁴

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former VSS, VHI, and VES customers might temporarily be interrupted when VSS, VHI, and VES cease providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; some 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.

7. We find that Petitioners have demonstrated that a limited waiver of the

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 1.

¹³ Waiver Petition at 1-2.

¹⁴ Waiver Petition at 2.

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 the parties to the transfer will undertake a two-step process to notify the affected customers of the transfer. In a first letter, the transferring company will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.¹⁵ This notification will also advise the affected customers that they may choose a different preferred carrier, should they desire to do so.¹⁶ In addition, customers will be given a toll-free number to call with any questions they may have about the transition.¹⁷ Once the proposed transfer has been consummated, Petitioners will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁸ Petitioners have also agreed to work with the complainants and the Commission to investigate and resolve complaints regarding services provided by VSS, VHI, and VES.¹⁹ We conclude that these conditions will adequately protect the rights of the transferred customers of VSS, VHI, and VES.

8. 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 Petitioners' provision of customer notification and handling of complaints, as described above and further detailed in the Waiver Petition.

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

¹⁵ VLD and VES filed sample notification letters. *See* Waiver Petition, Exhibits One and Two (Notification Letters); Waiver Petition at 2.

¹⁶ Waiver Petition at 2; Notification Letters. Notices provided to certain business customers will state that the customer's option to choose a different carrier is subject to the terms and conditions of its plan.

¹⁷ Waiver Petition at 2; Notification Letters.

¹⁸ Waiver Petition at 2; Notification Letters.

¹⁹ Waiver Petition at 2.

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 on October 27, 2000 by Bell Atlantic Communications, Inc., d/b/a Verizon Long Distance, and NYNEX Long Distance, Inc., d/b/a Verizon Enterprise Solutions, IS GRANTED subject to the conditions, and to the extent, indicated herein.

10. 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