

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

2000 DEC 28 P 12: 00

In the Matter of )  
)  
Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
)  
AT&T Corporation )  
)  
Petition for Expedited Waiver )  
)  
)

CC Docket No. 94-129 /

ED

ORDER

Adopted: December 20, 2000

Released: December 21, 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 AT&T Corporation (AT&T) 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

<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*, 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*.

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

<sup>3</sup> On November 30, 2000, AT&T Corporation filed a Petition for Expedited Waiver relating to AT&T's acquisition of the customer base of Alliance Group Services (Waiver Petition). On December 14, 2000, AT&T filed a Supplement to the Waiver Petition (Supplement), which includes, among other things, a revised customer (continued....)

enable AT&T to become the preferred long distance carrier of the consumers currently presubscribed to Alliance Group Services (Alliance), 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. AT&T seeks a waiver of our verification rules to allow AT&T to be designated the preferred long distance carrier for the customers of Alliance 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 AT&T 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.<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

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notification letter. On December 19, 2000, AT&T filed a Second Supplement to the Waiver Petition, which includes additional information concerning its request for expedited treatment. (Second Supplement).

<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. § 64.1120(c).

<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).

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 AT&T 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 AT&T to transfer to its own customer base the affected Alliance long distance customers. According to the Waiver Petition, Alliance is a switchless reseller providing presubscribed intraLATA and interLATA services to end users.<sup>12</sup> AT&T provides the underlying telecommunications service to Alliance through its Software Defined Network and Distributed Network Services offerings. AT&T states that Alliance owes AT&T a substantial unpaid balance for the underlying services Alliance resells to its end users.<sup>13</sup> To satisfy the unpaid account, the amount of which is not disputed by Alliance, AT&T and Alliance have agreed to transfer Alliance's customer base to AT&T, subject to the Commission's grant of a waiver of its authorization and verification rules.<sup>14</sup> AT&T asserts that, if the Commission grants AT&T's waiver request, AT&T will seamlessly shift Alliance's end users to ACC Long Distance Service, a wholly-owned subsidiary of AT&T that provides presubscribed long distance service at discounted calling rates.<sup>15</sup>

6. AT&T seeks expedited treatment of its Waiver Petition because, without a waiver, AT&T will soon terminate its provision of resold services to Alliance for nonpayment, resulting in the disruption of long distance service to Alliance customers.<sup>16</sup> AT&T maintains that Alliance has not submitted a payment on its account since October 18, 2000.<sup>17</sup> According to the Second Supplement, although a substantial unpaid balance on Alliance's account remains due and owing, AT&T continues to provide underlying services to Alliance.<sup>18</sup> As noted above, AT&T and Alliance have agreed that Alliance may satisfy the outstanding balance on its account by

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<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 1.

<sup>13</sup> Waiver Petition at 2.

<sup>14</sup> Waiver Petition at 2.

<sup>15</sup> Waiver Petition at 4.

<sup>16</sup> Waiver Petition at 4.

<sup>17</sup> Second Supplement at 2.

<sup>18</sup> Second Supplement at 1-2.

transferring its customer base to AT&T.<sup>19</sup> AT&T asserts that, if the transfer of Alliance's customer base to AT&T is not promptly implemented, AT&T will be compelled to terminate service to Alliance.<sup>20</sup>

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

8. We also find that AT&T has demonstrated that a limited waiver of the authorization and verification rules is in the public interest. AT&T argues that, given the size of Alliance's customer base, it is unlikely that AT&T will be able to obtain the verification of each of Alliance's customers before the conversion of Alliance's customer base to AT&T.<sup>21</sup> Therefore, AT&T commits that it will ensure that the affected customers receive notice of the proposed transfer before they receive their first AT&T bills.<sup>22</sup> According to the Waiver Petition and Supplement, the notification letter will inform customers of the proposed transaction, and assure them that no charges or rate increases will be assessed in connection with the transfer from Alliance to AT&T.<sup>23</sup> The notification letter will also advise the affected customers that they are free to choose a different preferred carrier, should they desire to do so.<sup>24</sup> In addition, customers will be given a toll-free number to call with any questions they may have about the transition.<sup>25</sup> Moreover, AT&T states that it will work with the Commission to investigate and resolve complaints regarding services provided by Alliance.<sup>26</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of Alliance. Given the urgency of the situation, we further conclude that it is in the public interest to grant AT&T's waiver request expeditiously.

9. For the foregoing reasons, we grant AT&T a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this

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<sup>19</sup> Waiver Petition at 2.

<sup>20</sup> Waiver Petition at 4.

<sup>21</sup> Waiver Petition at 3-4.

<sup>22</sup> Second Supplement at 1.

<sup>23</sup> AT&T filed a sample notification letter. *See* Supplement, Appendix A. (Notification Letter).

<sup>24</sup> Waiver Petition at 5-6; Notification Letter.

<sup>25</sup> *See* Notification Letter.

<sup>26</sup> Supplement at 1-2.

waiver is conditioned upon the provision by AT&T of customer notification and upon the handling of complaints, as described above and further detailed in the Waiver Petition and Supplements.

### III. ORDERING CLAUSES

10. 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 AT&T Corporation on November 30, 2000, and supplemented on December 14, 2000, and on December 19, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

*K. Michele Walters*

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