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

2001 FEB 16 P 3: 42

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
TruCom Corporation BridgeCom International, Inc.	)	
	)	
Joint Petition for Waiver	)	

ORDER

Adopted: February 13, 2001 **Released: February 14, 2001**

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 TruCom Corporation (TruCom) and BridgeCom International, Inc. (BridgeCom) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.[3] TruCom

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[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 (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 15996 (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 January 12, 2001, TruCom and BridgeCom filed a Joint Petition for Waiver relating to BridgeCom's acquisition of TruCom. (Waiver Petition).

and BridgeCom seek this waiver a part of a merger transaction whereby TruCom and BridgeCom will become wholly-owned subsidiaries of a new holding company primarily owned by the current shareholders of BridgeCom.[4] Our ruling on this waiver does not prejudge in any way the Commission's ultimate determination as to whether the transfers of control will serve the public interest, convenience, and necessity.[5] We grant this limited waiver to the extent necessary to enable BridgeCom to become the preferred carrier of the consumers currently presubscribed to TruCom, 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."[6] 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.[7] 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.[8]

3. TruCom and BridgeCom seek a waiver of our verification rules to allow BridgeCom to be designated the preferred local and long distance carrier for the affected customers of TruCom 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 TruCom and BridgeCom a waiver, subject to the conditions represented in

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[4] Waiver Petition at 2. We note that TruCom and BridgeCom have filed a Joint Petition for Transfer of Control as required under Section 214 for their international telecommunications services but have not yet filed a similar petition for their domestic telecommunications services. *See In the Matter of TruCom Corporation, BridgeCom International, Inc. Joint Application for Consent to Transfer of Control Pursuant to Section 214 of the Communications Act of 1934, as amended*, File Nos. ITC-214-19971104-00683, ITC-214-19971020-00645, filed January 12, 2001; 47 U.S.C. § 214.

[5] See 47 U.S.C. §§ 214, 310(d).

[6] 47 U.S.C. § 258.

[7] 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).

[8] 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).

their filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.[9] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[10] The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[11] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[12] 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.[13]

5. We find that TruCom and BridgeCom 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 BridgeCom to transfer to its own customer base the affected TruCom local and long distance customers. According to the Waiver Petition, both TruCom and BridgeCom provide international and domestic local and interexchange telecommunications services to customers in New York, New Jersey, and Pennsylvania.[14] As part of this transfer of control, TruCom and BridgeCom have entered into an Agreement and Plan of Merger whereby TruCom and BridgeCom will become wholly-owned subsidiaries of a new holding company primarily owned by the current shareholders of BridgeCom.[15] Ultimately, BridgeCom will provide TruCom's customers with the same telecommunications services previously provided by TruCom.[16]

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former TruCom customers might temporarily be interrupted when TruCom ceases providing presubscribed service to customers who fail to respond in a timely

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9 47 C.F.R. § 1.3.

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

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

12 *WAIT Radio*, 418 F.2d at 1157.

13 *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

14 Waiver Petition at 2.

15 *Id.* The parties note that they currently have a Joint Application for Consent to Transfer Control Pursuant to Section 214 regarding international telecommunications service pending before the Commission. *See id.; In the Matter of TruCom Corporation, BridgeCom International, Inc. Joint Application for Consent to Transfer of Control Pursuant to Section 214 of the Communications Act of 1934, as amended*, File Nos. ITC-214-19971104-00683, ITC-214-19971020-00645, filed January 12, 2001.

16 Waiver Petition at 2-3.

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.

7. We find that TruCom and BridgeCom 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 TruCom and BridgeCom have agreed to notify the affected customers as described below. According to the Waiver Petition, TruCom and BridgeCom will undertake a two-step process to notify the affected customers of the transfer. In a first letter, TruCom and BridgeCom will inform the affected customers of their plans to merge and assure the customers that no charges or rate increases will be imposed as a result of the merger and the new service provided by BridgeCom.[17] TruCom and BridgeCom will also clearly inform the affected subscribers that they have a right to switch carriers at any time and that, if they decide to do so within 30 days, BridgeCom will reimburse them for any associated carrier change charge.[18] In addition, TruCom and BridgeCom will provide these customers with a toll-free number to call with any questions they may have about BridgeCom.[19]

8. According to TruCom and BridgeCom, once the proposed transfer has been consummated, BridgeCom will notify these customers of that event and reiterate the foregoing information, assurances, and advice.[20] In addition, in the Waiver Petition, BridgeCom states that it will investigate and resolve any outstanding complaints that may have been filed against TruCom.[21] We conclude that these conditions will adequately protect the rights of the transferred customers of TruCom.

9. For the foregoing reasons, we grant TruCom and BridgeCom 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 of customer notification and the handling of complaints and upon Commission approval of the transfers of control of licenses and lines from TruCom to BridgeCom, as described above and further detailed in the Waiver Petition.

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

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17 Waiver Petition at 3-4; Waiver Petition, Exhibit 1.

18 *Id.*

19 Waiver Petition, Exhibit 1.

20 Waiver Petition, Exhibit 2.

21 Waiver Petition at 3, n.5.

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 TruCom Corporation and BridgeCom International, Inc. on January 12, 2001, IS GRANTED subject to the conditions, and 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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Associate Chief,
Accounting Policy Division,
Common Carrier Bureau