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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	)	CC Docket No. 94-129
	)	
Southwestern Bell Telephone Company	)	
	)	
Petition for Waiver	)	

ORDER

Adopted: February 15, 2001 **Released: February 16, 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 Southwestern Bell Telephone Company (Southwestern Bell) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.[3] We grant this limited

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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); *stay lifted, MCI World Com v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15966 (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 February 5, 2001, Southwestern Bell filed a Petition for Waiver of the Commission's carrier change rules relating to the transfer from Sprint Communications Company (Sprint) to Southwestern Bell of Sprint's residential local resale subscriber base in Texas (Waiver Petition). On February 14, 2001, Southwestern Bell filed (continued....)

waiver to the extent necessary to enable Southwestern Bell to become the preferred carrier of certain consumers currently presubscribed to Sprint in Texas, 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. Southwestern Bell seeks a waiver of our verification rules to allow it to be designated the preferred local carrier for certain customers of Sprint without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant Southwestern Bell 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.[7] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[8]

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a Supplemental Petition for Waiver that provided a replacement for the Exhibit 3 attached to its Waiver Petition (Supplement).

[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*, 14 FCC Rcd at 1593,1594, 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).

[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).

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 Southwestern Bell 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 Southwestern to transfer to its own customer bases the affected Sprint customers. In the Waiver Petition, Southwestern Bell states that, for business reasons, Sprint seeks to exit the residential local exchange services resale market in Texas and has notified its customers of this intent on December 15, 2000. Sprint notified its local customers that it would cease providing service in Texas on February 19, 2001, and that, if the customer had not made alternative arrangements by February 16, 2001, the customer would be transferred to the underlying provider, either Southwestern Bell or Verizon.[12] Southwestern Bell asserts that, in Texas, such a default to the underlying carrier will happen automatically, absent a finding by the Texas Public Utilities Commission (PUC) that the transfer would constitute a violation of the Texas PUC's slamming rules.[13]

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former Sprint customers might temporarily lose their presubscribed local service when Sprint ceases to provide such service in the affected exchanges. 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 local service to the transferred customers.

7. We find that Southwestern Bell has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing local service, and because Southwestern has agreed to notify the affected customers as described below. Southwestern Bell states that a two-step process to notify the affected customers of the transaction has already begun, with Sprint sending notification letters as described above.[14] These initial notification letters informed the affected customers that, if they did not select a new provider of local service by February 16, 2001, they would be

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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 1-2; Waiver Petition, Exhibit 1.

13 Southwestern Bell filed correspondence with the Texas PUC regarding this transfer. Waiver Petition at 2; Waiver Petition, Exhibit 2.

14 Waiver Petition at 2-4; Waiver Petition, Exhibit 1.

transferred to Southwestern Bell for their service on February 19, 2001.[15] The letter also told the affected customers that Sprint would credit their accounts for any charges associated with a transfer to Southwestern Bell or for charges that might result if they chose a new local service provider.[16] These pre-transfer letters also provided the affected customers with telephone numbers that they could use to call Sprint free of charge with any questions regarding the discontinuance of service.[17]

8. According to Southwestern Bell, once the proposed sale has been consummated, Southwestern Bell will send these customers a post-transfer notification letter informing them of that event and of their right to switch local carriers at any time.[18] The post-transfer notification letters will also provide the terms and conditions of service, including the fact that any tariffed switching charges incurred as a result of the transfer will be billed to Sprint.[19] In addition, the letter will give the affected customers a toll-free number to call for further assistance regarding their services.[20] We conclude that these conditions will adequately protect the rights of Sprint's transferred customers.

9. For the foregoing reasons, we grant Southwestern Bell 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, as described above and further detailed in the Waiver Petition and Supplement.

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. §§

15 Waiver Petition, Exhibit 1.

16 *Id.*

17 *Id.*

18 Waiver Petition at 3; Supplement, Exhibit 3.

19 *Id.*

20 *Id.*

0.91,0.291, 1.3, the waiver request filed by Southwestern Bell Telephone Company on February 5, 2001, and supplemented on February 14, 2001, 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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Associate Chief, Accounting Policy Division
Common Carrier Bureau