

**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 |) | CC Docket No. 94-129 |
| Telecommunications Act of 1996 |) | |
| |) | |
| Manhattan Telecommunications Corporation |) | |
| d/b/a Metropolitan Telecommunications a/k/a |) | |
| MetTel Petition for Waiver |) | |

EMERGENCY PETITION FOR LIMITED WAIVER

Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications a/k/a MetTel (“MetTel”) respectfully requests a limited waiver of the customer authorization and verification requirements codified in the Commission’s rules, 47 C.F.R. §§ 64.1100 through 64.1190 (2000), and relevant Commission Orders to the extent necessary to permit it to transfer customers of North American Telecommunications Corporation (“NATELCO”) to MetTel’s customer base without first obtaining the customers’ authorization and verification.¹ In support of that request MetTel states as follows:

¹ The FCC’s verification rules prohibit a telecommunications carrier from submitting a preferred carrier change order unless the carrier has obtained either: (1) the subscriber’s written letter of agency; (2) the subscriber’s electronic verification via a toll-free telephone number used exclusively to verify subscriber carrier changes; or (3) the subscriber’s oral authorization to submit the preferred carrier change order from an appropriately qualified independent third party that confirms and includes appropriate verification data – e.g., the subscriber’s date of birth or social security number. See 47 C.F.R. §64.1100 (2000).

I. Introduction

The Commission's rules may be waived for good cause.² As demonstrated herein, MetTel fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in WAIT Radio v. FCC³ and expeditious grant of the instant Petition will serve the public interest. Moreover, MetTel's request for a waiver is substantially identical to waivers of these rules previously granted by the Commission to the other carriers.⁴ MetTel requests expedited treatment of this waiver. As will be described below, MetTel is acquiring certain assets of NATELCO pursuant to a bankruptcy sale. As NATELCO is in the process of winding down its business units and limited funds are available to maintain the operation during this period of time, expeditious approval of this waiver request is necessary to ensure that there will be no disruption in service to those customers served by NATELCO.

II. Background

MetTel is a Competitive Local Exchange Carrier (CLEC), currently offering local exchange and interexchange telecommunications services at locations throughout the State of New York.⁵

² 47 C.F.R. §1.3.

³ WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), See also Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164 (D.C.Cir.1990).

⁴ See *infra* note 9.

⁵ MetTel was authorized to provide competitive resold and facilities-based local and interexchange services in the State of New York pursuant to Certificate of Public Convenience and Necessity granted by the New York Public Service Commission on September 23, 1996, Case 96-C-0504; amendment to the Certificate approved on July 21, 1997, Case 97-C-0369.

On February 23, 2001 NATELCO filed in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) for protection under Chapter 11 of the U.S. Bankruptcy Code, solely for the purpose of liquidating its assets. Pursuant to a bankruptcy sale, MetTel entered into an Asset Purchase Agreement with NATELCO in which MetTel agreed to acquire a portion of the NATELCO’s customer base, namely payphone access lines, including the customer accounts and accounts receivable (“NATELCO Payphone Customers”). On April 4, 2001, MetTel filed an Emergency Petition for Limited Waiver of the Commission’s carrier change rules to permit it to acquire NATELCO Payphone Customers (the “April 4th Petition”). The April 4th Petition was approved by the Commission on April 11, 2001.⁶

In addition to NATELCO Payphone Customers, MetTel desires to acquire those customers of NATELCO, which have not been acquired as of this date and will be subject to interruption of service when NATELCO ceases its operations (“NATELCO Subscribers”). Pursuant to the bankruptcy sale, an auction of NATELCO assets will be conducted on April 19, 2001 (the “Auction”). MetTel will attempt the acquisition of NATELCO Subscribers at the Auction.

MetTel requests expedited approval of this Waiver Petition in order to avoid the interruption of service to NATELCO Subscribers. As limited funds are available to maintain the operation, NATELCO will continue providing local, long distance, and intraLATA toll service to NATELCO Subscribers for only a short period of time. In order to avoid subjecting NATELCO Subscribers to interruption of service, MetTel

^{6 6} See e.g., Manhattan Telecommunications Corporation a/k/a Metropolitan Telecommunications d/b/a MetTel *Petition for Waiver*, CC Docket No. 94-129, Order, DA-01-908 (rel. Apr. 12, 2001) (granting request to allow transfer of customer base pursuant to asset purchase agreement pursuant to bankruptcy sale);

desires to transfer the NATELCO Subscribers to MetTel's customer base on April 20, 2001. Accordingly, MetTel seeks expedited approval of the Waiver Petition to ensure that all of the NATELCO Subscribers continue to receive local, long distance, and intraLATA toll telephone service without interruption after NATELCO ceases providing the service. If MetTel's Waiver Petition is granted before April 20, 2001, MetTel will effect a seamless transition of NATELCO Subscribers to MetTel's customer base without interruption of service. Unless the FCC grants this Petition, these NATELCO Subscribers may be subject to higher rates and lack of available telecommunications service.

In conformance with the notification procedures previously approved by the Commission in this docket, MetTel will implement a two-step process to notify affected customers of the pending transfer of services and assure that these customers' rights are adequately protected. Specifically, MetTel will send a letter to each NATELCO Subscribers before their transfer to MetTel's customer base. Said notification will: (1) notify them of the pending transfer of their telephone service to MetTel; (2) assure them that no charge or rate increase will be imposed as a result of the transaction; (3) advise them that they are free to change their local, long distance, and intraLATA toll preferred carrier(s); and (4) inform them that they may contact MetTel via a toll-free number with any questions regarding the pending transfer of their account to MetTel's customer base. A copy of this customer notification letter is attached as Exhibit A.⁷ Following the transfer of NATELCO Subscribers to MetTel customer base, MetTel will send another

⁷ MetTel recognizes that the Commission prefers to review all customer notification letters before they are sent to the affected customers. To the extent the Commission desires any revisions to the customer notification letter, MetTel will supplement this Waiver Petition and revise the customer notification letter accordingly.

notification letter to NATELCO Subscribers reiterating the information, advice, and assurances provided in the first letter. A copy of the proposed second customer notification letter is attached as Exhibit B.

Additionally, if the Commission grants this Petition For Waiver, MetTel agrees to investigate and attempt to resolve any outstanding customer complaints that may have been made by NATELCO Subscribers prior to the migration and to address all customer inquiries and complaints after that date. MetTel submits that its proposed notification process and commitment to address customer complaints will adequately safeguard the rights of customers to be transferred from NATELCO to MetTel's customer base.

III. Special Circumstances Exist to Grant the Waiver Request

The Commission has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.⁸ Such special circumstances exist in this case for waiver of 47 C.F.R. §§ 64.110 through 64.1190. It is of paramount importance to MetTel and NATELCO to ensure a seamless transition of NATELCO Subscribers to MetTel without inconvenience or disruption of service. Further, prompt approval of this request will enable the parties to consummate the asset acquisition at the earliest opportunity. Prompt completion of this sale is essential to protect the interests of NATELCO's creditors as well as those customers who have come to rely on NATELCO's service.

Moreover, the letters that MetTel will send to the NATELCO Subscribers will ensure that those customers are fully informed of the process and that their rights are adequately

⁸ WAIT Radio at 1159, Northeast Cellular Telephone Co. at 1166.

protected. In addition, after NATELCO Subscribers are transferred to MetTel, they will receive a second letter again informing them of this information.

By granting this waiver request to allow the transfer of these customers via notification as described in this Petition, the Commission will ensure that the policy goals which underlie the carrier change rules are served but in a more efficient fashion that will permit MetTel to transfer seamlessly NATELCO customers to its service without any disruption of service. Further, MetTel will work with the Commission to investigate and resolve outstanding customer complaints (if any) regarding services that may have been provided by NATELCO. The circumstances involved in the instant Petition are similar to those in which the Commission has previously found sufficient to justify a waiver of these rules for other carriers.⁹

⁹ See e.g., Time Warner Telecom, Inc. Petition for Waiver, CC Docket No. 94-129, Order, DA-00-2430 (rel. Oct. 27, 2000) (granting request to allow transfer of customer base pursuant to asset purchase agreement pursuant to bankruptcy sale); Iowa Telecomms. Servs. Petition for Waiver, CC Docket No. 94-129, Order, DA-99-2777 (rel. Dec. 10, 1999) (granting request to allow transfer of customer base following market exit by previous carrier); International Exchange Comms. Petition for Waiver, CC Docket No. 94-129, Order, DA 99-1819 (rel. Sep. 10, 1999) (granting waiver to allow transfer of customer accounts pursuant to asset purchase agreement with another carrier); MCI WorldCom, Inc. Petition for Waiver, CC Docket 94-129, Order, 14 FCC Rcd 12264 (rel. Aug. 6, 1999) (granting waiver to allow transfer of customer accounts pursuant to asset purchase agreement with another carrier); CoreComm Limited Petition for Waiver, CC Docket No. 94-129, Order, DA 99-893 (rel. May 13, 1999) (granting waiver to allow transfer of customer accounts pursuant to asset purchase agreement coinciding with bankruptcy proceeding).

Conclusion

WHEREFORE, in view of the foregoing, MetTel respectfully requests the Commission grant a limited waiver of the authorization and verification requirements of the Commission's rules, 47 C.F.R. §§ 64.1100 – 64.1190 (2000), and the relevant Commission's Orders to the extent necessary to permit it to transfer customers of NATELCO to MetTel's customer base without first obtaining the customers' authorization and verification. Overall, for the reasons stated herein, grant of this Petition will serve the public interest.

Respectfully submitted,
Manhattan Telecommunications Corporation
d/b/a Metropolitan Telecommunications
a/k/a MetTel

Andoni Economou
Executive Vice President

April 16, 2001

**NOTICE OF CHANGE IN YOUR LOCAL, LONG DISTANCE, AND
INTRALATA TOLL SERVICE PROVIDER**

Date

Dear Customer:

MetTel and North American Telecommunications Corporation (“NATELCO”) are pleased to announce that they entered into an agreement whereby MetTel will purchase a portion of the telecommunications business of NATELCO. Upon closing of the agreement, MetTel will be your local, long distance*, and intraLATA toll** service provider beginning (contingent upon the FCC approval of the Waiver Petition).

If you have any questions or concerns about this notice, please call MetTel at its toll free number, 1-877-METTEL-1 (1-877-638-8351).

Please note the following important information:

1. MetTel will provide you with the same or better high quality telecommunications services as you currently receive from NATELCO.
2. There will be no charges or rate increases imposed by MetTel as a result of the change in your telephone carrier and MetTel will honor all service agreements through their date of expiration.
3. Should you prefer to use another company as your local, , long distance, or intraLATA toll service provider, you have the right to switch to another local, long distance, or intraLATA toll carrier of your choice other than MetTel, subject to the terms and conditions of any applicable service agreements.
4. You may contact MetTel at our toll-free number, 1-877-METTEL-1 (1-877-638-8351).

MetTel extends a special welcome to all customers. We realize you have a choice of telecommunications carriers, and we appreciate your business.

Sincerely,

MetTel

* Your long distance service will be migrated to MetTel only if you relied on North American Telecommunications Corporation for intraLATA toll service.

** Your intraLATA toll service will be migrated to MetTel only if you relied on North American Telecommunications Corporation for intraLATA toll service.

**SECOND NOTICE OF CHANGE IN YOUR LOCAL, LONG DISTANCE, AND
INTRALATA TOLL SERVICE PROVIDER**

Date

Dear Customer:

This is a follow-up letter concerning a change in your local, long distance, and intraLATA toll service provider. As you already know, through an agreement between MetTel and North American Telecommunications Corporation (“NATELCO”), MetTel has purchased a portion the telecommunications business of NATELCO and is now your local, long distance, and intraLATA toll service provider.

If you have any questions or concerns about this notice, please call MetTel at its toll-free number, 1-877-METTEL-1 (1-877-638-8351).

Please note the following important information:

1. MetTel will provide you with the same or better high quality telecommunications services as you currently receive from NATELCO.
2. There will be no charges or rate increases imposed by MetTel as a result of the change in your telephone carrier and MetTel will honor all service agreements through their date of expiration.
3. Should you prefer to use another company as your local, long distance, or intraLATA toll service provider, you have the right to switch to another local, long distance, or intraLATA toll carrier of your choice other than MetTel, subject to the terms and conditions of any applicable service agreements.
4. You may contact MetTel at our toll-free number, 1-877-METTEL-1 (1-877-638-8351).

MetTel extends a special welcome to all customers. We realize you have a choice of telecommunications carriers, and we appreciate your business.

Sincerely,

MetTel