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

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In the Matter of	)	
	)	
2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 00-257
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
SureWest Communications	)	
	)	
Petition for Waiver	)	

ORDER

Adopted: July 11, 2002 **Released: July 12, 2002**

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Streamlining Order*, the Commission instituted streamlined procedures for compliance with the authorization and verification requirements of our rules and of section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, in situations involving the carrier-to-carrier sale or transfer of subscriber bases.[1] In this *Order*, we find it is in the public interest to grant SureWest Communications (SureWest) a limited waiver of these rules. We grant this waiver to the extent necessary to enable SureWest, without complying precisely with the Commission's streamlined procedures, to become the presubscribed provider of local and long distance service to customers of a competitive local exchange carrier (CLEC) and long distance reseller currently in bankruptcy proceedings.

2. In 1998, the Commission adopted rules to implement section 258 of the 1996 Act, which expanded the Commission's existing authority to deter and punish "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telecommunications

[1] *See 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, ("*Streamlining Order*"), 16 FCC Rcd 11218 (2001), adopting 47 C.F.R. § 64.1120(e). *See also* 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

service.[2] Pursuant to section 258 and the Commission's rules, carriers are barred from changing a customer's preferred carrier without first complying with the Commission's procedures.[3]

3. According to the streamlined procedures adopted by the Commission, carriers need not obtain individual subscriber authorization and verification for carrier changes associated with the carrier-to-carrier sale or transfer of a subscriber base, provided that, not later than 30 days before the planned carrier change, the acquiring carrier notifies the Commission, in writing, of its intention to acquire the subscriber base and certifies that it will comply with the required procedures, including the provision of 30-day advance written notice to all affected subscribers.[4] These rules are designed to ensure that affected subscribers have adequate information about the carrier change in advance, that they are not financially harmed by the change, and that they will experience a seamless transition of service from their original carrier to the acquiring carrier.[5] This self-certification process also provides the Commission with information it needs to fulfill its consumer protection obligations.[6]

4. On July 10, 2002, SureWest filed with the Commission an expedited Petition for Waiver (Petition) asking the Commission to waive the 30-day advance notice requirements of sections 64.1120(e)(1) and (e)(3) of the rules to permit the transfer of local and long distance customers from Western Integrated Networks, LLC, dba WINfirst (WINfirst), a CLEC and long distance reseller, to SureWest pursuant to a July 10, 2002 bankruptcy court order.[7]

II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.[8] As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.[9] The Commission

[2] 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, 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 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), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., 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); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

[3] *Id.*

[4] 47 C.F.R. § 64.1120(e).

[5] *See Streamlining Order* ¶ 10, 16 FCC Rcd at 11222.

[6] *Id.*

[7] Petition for Waiver – Expedited Action Requested, filed with the Commission by SureWest Communications on July 10, 2002 (seeking waiver of 30-day notice requirements of 47 C.F.R. §§ 64.1120(e)(1) & (e)(3).)

[8] 47 C.F.R. § 1.3.

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

may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.[10] In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.[11] 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.[12] In addition, the Commission specified in the *Streamlining Order* that instances in which it is impossible to comply precisely with the streamlined procedures will be resolved on a case-by-case basis.[13]

6. We find that SureWest has demonstrated that good cause exists to justify a limited waiver of the Commission's requirements to the extent necessary to enable SureWest to transfer to its own customer base the affected WINfirst customers. According to the Petition, WINfirst provided local exchange and resold long distance service to customers located in and around Sacramento, California. SureWest states that WINfirst filed for protection under Chapter 11 of Title 11 of the U.S. Code in the U.S. Bankruptcy Court for the District of Colorado. SureWest states that, on July 10, 2002, the bankruptcy court judge directed the WINfirst trustee to transfer WINfirst's Sacramento customer base to SureWest.[14] SureWest states that, under the court's order, it has agreed to effect the transfer of WINfirst Sacramento customers to SureWest service by July 12, 2002.[15] Both local exchange and interexchange service will be provided by SureWest TeleVideo, a wholly-owned subsidiary of SureWest.[16]

7. Under the Commission's rules, no later than 30 days prior to the transfer, an acquiring carrier must self-certify its compliance with the required procedures to the Commission and must give the affected subscribers notice of, and certain information about, the transfer.[17] Given the special circumstances SureWest has described, compliance with the 30-day advance notice requirement could potentially result in the loss of local or long distance service for WINfirst customers during the 30-day period. Moreover, the bankruptcy court has directed WINfirst to acquire the customers by July 12, 2002. As noted above, the streamlined procedures were designed to permit affected subscribers to experience a "seamless transition of service from the original carrier to the acquiring carrier."[18] We find that, in the special circumstances of this case, waiver of the 30-day notice requirement would better serve this goal and would therefore serve the public interest.

8. In addition, SureWest states that it will offer the affected customers services and rates identical to those that the customers received from WINfirst.[19] SureWest also states that, within ten business days of the closing date of the transaction, it will send each affected customer a letter containing the information required by section 64.1120(e), including a toll-free number that the customer may use to

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

[11] *WAIT Radio*, 418 F.2d at 1157.

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

[13] *Streamlining Order* ¶ 20, 16 FCC Rcd at 11226.

[14] Petition at 1-2.

[15] *Id.*

[16] *Id.*

[17] 47 C.F.R. §§ 64.1120(e)(1) &(e)(3).

[18] *Streamlining Order* at ¶ 10, 16 FCC Rcd at 11222.

[19] Petition at 4.

call for answers to questions regarding the transfer, or to switch to a different local exchange or long distance carrier.[20] In the special circumstances presented in this case, we find it unlikely that the affected subscribers will suffer harm from receiving less than 30 days notice of the transfer and, in any event, we conclude that any such harms would be outweighed by the benefits of a seamless transfer of service.

9. For the foregoing reasons, we grant SureWest a waiver of the 30-day advance notification requirements of 47 C.F.R. §§ 64.1120(e)(1) and (e)(3) for the limited purposes described above. The grant of this waiver is conditioned upon SureWest's provision of customer notification and certification to the Commission that complies with all requirements of section 64.1120(e) except the 30-day periods waived herein.

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 0.141, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the waiver request filed by SureWest Communications, on July 10, 2002, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler, Deputy Chief
Consumer & Governmental Affairs Bureau

[20] *Id.* at 3-4.