EX PARTE OR LATE FILED

Wiley Rein & Fielding LLP

ORIGINAL

1776 K STREET NW
WASHINGTON, DC 20006
PHONE 202.719.7000
FAX 202.719.7049

7925 JONES BRANCH DRIVE
SUITE 6200
McLEAN, VA 22102
PHONE 703.905.2800
FAX 703.905.2820

www.wrf.com

December 4.2002

Robert J. Butler
202.719.7035
rbutler@wrf.com

VIA HAND DELIVERY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
236 Massachusetts Ave., N.E.
Suite 110
Washington, D.C. 20002

Re: **Notice of *Ex Parte* Presentation**
Verizon Emergency Petition- WC Docket No. 02-202
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers – CC Docket No. 94-129

Dear Ms. Dortch:

Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this notice and enclosures are being submitted to the Secretary' for filing in WC Docket No. 02-202. Two copies are also being filed in CC Docket No. 94-129. On Tuesday, December 3,2002, Mike Senkowski, Jason Gold, and myself, all partners at Wiley Rein & Fielding; Grant Spellmeyer, Regulatory and Corporate Counsel of TDS Telecommunications on behalf of the Mid-Size Carrier Group ("MSCG"), met with William Maher, Chief, Wireline Competition Bureau ("WCB); Jeffrey Carlisle, Senior Deputy Bureau Chief, WCB; Tamara Preiss, Chief, Pricing Policy Division, WCB; Gregory A. Cooke, Deputy Chief, Competition Policy Division, WCB; Judith A. Nitsche, Assistant Division Chief, Pricing Policy Division, WCB; James W. Lichford, Public Utilities Specialist, Pricing Policy Division, WCB; Pamela Arluk and Julie Saulnier of the WCB; and K. Michele Walters, Chief, Policy Division, Consumer and Governmental Affairs Bureau.

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1 47 C.F.R. §1.1206(b) (2001).

The purpose of our presentation was to discuss the MSCG's positions on the issues in these proceedings as set out in the attached documents, which were presented at the meeting. Should you have any questions concerning the above, please contact the undersigned.

Sincerely,

Robert J. Butler

Enclosures: (4)

RJB/ch

ACCESS SERVICE

2. General Regulations

2.W. Undertaking of the Telephone Company

2.W.X. Discontinuance and Refusal of Service

(A) [Existing]

(B) [Unless the provisions of __________ apply,] the Telephone Company may discontinue the provision of switched access services as set forth below if the Customer fails to comply with the provisions of *2.Y.Z.* including, without limitation, failure to make any payments required by the dates or at the times **as** herein specified, and fails to fully cure such noncompliance within the applicable time periods herein specified. In the case of a monetary default, a **full** cure of such non-compliance shall only be by way of payment in full of all outstanding amounts due hereunder, adequate assurances of any cure or compliance being insufficient to satisfy any cure required hereunder.

(1) Prior to or concurrently with discontinuing service under 2.W.X(B), the Telephone Company will take the following actions:

(a) The Telephone Company and the Customer will jointly send Customer's long distance toll end users individual written notice by U.S. Mail, postage prepaid, of the discontinuance of service **to** Customer and the migration of end users' long distance toll services to a transition long distance toll provider. The notice will identify the timing of the migration and the terms and conditions of the transition period and the service to be provided by the Telephone Company and/or the transition long distance toll provider as specified herein. Sections 2.W.X.(B)(1)(b) and 2.W.X.(B)(1)(c) shall apply and remain operative notwithstanding the failure of the Customer to cooperate or provide the notices required under this section 2.W.X.(1)(a).

(b) The Telephone Company will implement Primary Interexchange Camer (PIC) changes to designate the transition long distance toll provider as the Primary Interexchange Carrier for all of Customer's long distance toll end users and will waive all PIC charges that would otherwise apply to such redesignation as described in [PIC change provisions].

(c) The Telephone Company will ensure that, for a transition period not to exceed thirty (30) days, the Customer's end **users** are enrolled in the transition long distance toll provider's long distance toll rate plan for migrated end users at **a** flat per minute rate level not to exceed 7 cents per minute with no monthly fixed fee or minimum charge. All other terms and conditions of long distance toll service shall be as specified in the transition long distance toll provider's public service guide.

(2) Customer will cooperate with the Telephone Company in effecting the migration of its long distance toll end users to the transition long distance toll provider selected by the Telephone Company and in providing notice of the migration to those end users as specified herein. Sections 2.W.X.(B)(2) through 2.W.X.(B)(7) inclusive shall apply and remain operative notwithstanding the failure of the Customer to cooperate or provide the notices required under this section 2.W.X.(B)(2).

(3) **A** migrated long distance toll end user will be permitted to remain in the long distance toll rate plan specified in (1)(c) above for a transition period not to exceed thirty (30) days following the redesignation of that end user's PIC to the transition long distance toll provider. **At** any time during that thirty (30) day transition period, such end user may request that the transition long distance toll provider *or* any other available canier be designated **as** its PIC and any PIC change charge that would otherwise apply to such redesignation will be waived. The end user is responsible for making all service arrangements with its designated PIC. In the event any end user fails to affirmatively designate a PIC within the thirty (30) day transition period, on the thirty-first (31[st]) day after the migration the rate plan for migrated end users will no longer be available to those end users and the Telephone Company will cause those end users to be placed in the least cost general public rate plan available from the transition long distance toll provider for which those end users satisfy all eligibility requirements.

(4) If the Telephone Company discontinues service, it will also refuse additional applications for service and/or refuse to complete any pending orders for service by the noncomplying Customer.

(5) If the Telephone Company discontinues service, it will no longer route any switched access traffic that uses the Customer's Carrier Identification Code(s) (CIC). The Telephone Company may also refuse to accept and process any requests from end users or from the Customer to designate that Customer as an end user's Primary Interexchange Carrier.

(6) In the case of discontinuance as specified herein, all applicable charges, including, without limitation, termination charges, will immediately become due and owing.

(7) When access service is provided by more than one telephone company, the companies involved in providing the joint service may individually or collectively deny service to a Customer as specified in their respective tariffs. Where the telephone companies affected by the cause for discontinuance are incapable of effecting discontinuance of service without cooperation from the other joint providers of Switched Access Service, such other companies will, if feasible utilizing then current technology, assist in denying the joint service to the Customer. Service denial for such joint service will only include calls which originate or terminate within, or transit, the operating territory of the telephone companies initiating the service denial for nonpayment. When more than one of the joint providers must deny service to effectuate termination, in cases where a conflict exists in the applicable tariff provisions, the tariff regulations of the telephone company where the Customer and office is located shall take precedence and prevail for purposes of determining joint service discontinuance provisions. Where one joint provider refuses to participate in the discontinuance, the other joint provider may take any and all actions authorized by law or regulation to effectuate the discontinuance.

* * *

2.Y. Payment Arrangements and Credit Allowances

2.Y.Z. Payment of Charges and Deposits

(A)-(?) [Existing]

(Q) All invoices, bills, or other documents evidencing charges to a Customer who is a debtor or an alleged debtor under any provision of Title 11 of the United States Code or similar state *or* foreign insolvency proceedings are due when rendered and payable within 15 days in immediately available funds. Invoices will be deemed rendered when sent if delivered electronically, by facsimile, or by overnight courier, and three (3) business days after they are sent if delivered by **U.S.** mail. All such invoices, bills, or other documents evidencing charges are considered past due 16 days after the date the invoice is deemed rendered.

(1) The Telephone Company will send notice of nonpayment to Customer via facsimile or electronic delivery [or such other means as authorized by a Bankruptcy Court] to the person designated by Customer to receive such a notice of noncompliance in the event payment is not received within the time period as specified in 2.Y.Z.(Q). In the event Customer does not remit payment in immediately available funds within **3** days or such longer period as specified by the Bankruptcy Court after notice to Customer as specified herein, the Telephone Company may discontinue service as specified in 2.W.X.(B).

(2) In the event that the Telephone Company has not rendered a decision on any bill that the Customer has disputed in good faith [list existing tariff section for initiating a billing dispute] and has not made timely payment as required hereunder as a result of such bona fide dispute, the Telephone Company will not initiate any of the actions described in (Q) and (1) above on the basis of such non-payment.

(3) **If** Customer is a debtor or **an** alleged debtor under any provision of Title 11 of the United States Code or similar state or foreign insolvency proceedings, Customer will provide notice by U.S. mail, postage prepaid, to its long distance toll end **users** of the provisions of this section and 2.W.X(B) and advise them that the migration plan described therein may be implemented in the event Customer fails to comply with payment requirements applicable to its bills for switched access services after the commencement of **a** proceeding under any provision of Title 11 of the United States Code or similar state or foreign insolvency proceedings.

An Interim Waiver of the PIC Change Rules Is Warranted To Permit Implementation of the STCPP

The Commission should grant an interim waiver of its PIC change rules[1] to permit carriers to implement the Mid-Size Carrier Group's seamless transition customer protection plan ("SCTPP") in connection with the WorldCom bankruptcy. The FCC can consider adopting a permanent change in those rules through a future rulemaking or in the context of the pending proceeding on carrier selection.[2]

Substantial precedent supports granting interim waivers pending consideration of an issue in a rulemaking proceeding. Where the FCC "[n]ormally" would "wait for the industry to submit a proposal and then investigate it through a rule making proceeding," it nonetheless has granted a "temporary general waiver" where there was a significant need.[3] The present circumstances involving WorldCom present such a need. As Chairman Powell has stated, the telecommunications sector is "an industry suffering" amidst "difficult—and for many dire—times."[4] Ongoing revelations cast serious doubts about WorldCom's ability to reorganize successfully and to continue to provide service to customers. WorldCom continues to identify additional fraudulent accounting practices, with the latest reports indicating that its accounting restatements will exceed $9 billion.[5] WorldCom's operating losses continue to mount, as well, with reported losses of $331 million in July, $98 million in August, and $108 million in September.[6] The Mid-Size Carrier Group's members must be ready to step in to protect both their and WorldCom's customers in the event of a post-petition default.

Moreover, there is an urgent need to mitigate the severe hardship to small and mid-size incumbent local exchange carriers from their continuing exposure to significant losses in providing service to WorldCom without guarantees of compensation. The Mid-Sized Carrier Group's exposure to bad debt from WorldCom alone accounts for 13 to 29 percent of access

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1 47 C.F.R. § 64.1120(e).

2 *Implementation of the Subscriber Carrier Selection Chonges Provisions of the Telecommunicatians Act af 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers 'Long Distance Carriers*, CC Docket No. 94-129, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000); amended, Order, FCC 01-67 (rel. Feb. 22, 2001); reconsideration pending.

3 *Temporary Waiver of the Maritime Service Rules (Part 80) to Permit Higher Powered Operation of 406 MHz Emergency Position Indicating Rodio Beacons*, Order, 8 FCC Rcd 34 at ¶ 3 (Priv. Radio Bur. 1992) (granting temporary waiver permitting the higher-powered operation of public safely homing beacons) ("*Temporary Waiver of the Maritime Service Rules*").

4 *Remarks of Michael K. Powell, Chairman. Federal Communications Commission, at the Goldman Sachs Communicopia XI Conference New York, NY* (Oct. 2, 2002) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-226929A1.doc.

5 Rebecca Blumenstein and Gregory Zuckerman, *Bond Fund, Rudolph Giulioni Emerge as Players in WorldCom*, Wall St. J. A.1 (Nov. 18, 2002).

6 *WorldCom Issues Sept 2002 Operating Results*, Dow Jones News Serv. (Nov. 11, 2002); *WorldCom July Rev $2.46B*, Dow Jones Int'l News (Oct. 22, 2002).

revenues, and 4 to 9 percent of total ILEC revenues. These hardships threaten not only the viability of the incumbent carriers themselves, but also the continuity, quality and affordability of service for end-users. The Commission must promptly intervene to allow such carriers to minimize the risk of incumng these harms.

Indeed, even in the absence of a crisis situation, the Commission has granted interim waivers where good cause exists: even when the petitioner specifically seeks a permanent waiver or a rule change.' Good cause exists where "special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."' Here, the existing rules stand as a barrier to the FCC's goal of "provid[ing] customers with a reasonable opportunity to find and transition to a new service provider."[10] Further, incumbent carriers' bad debt exposure due to the bankruptcies of numerous IXCs and CLECs is substantial, and increasing daily, threatening further significant financial harm at a time when small- and mid-sized carriers can ill afford it. As explained above, granting an interim waiver would allow use of the STCPP to protect customers from potential loss of service as well as help stem the growing losses that incumbent carriers are facing due to the industry meltdown,

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[7] *E.g., Year 200 Biennial Regulatory Review – Amendment of Pari 22 of the Commission's Rules io Modify or Eliminate Outdated Rules Affecting the Cellular Radiotelephone Service and Other Commercial Mobile Radio Services,* Notice of Proposed Rulemaking, WT Docket No. 01-108, FCC 01-153 at ¶42 n.58 and Appendix B (rel. May 17, 2001)(proposing to modify PCS emissions limitations to "effectively codify and expand upon a waiver that the Wireless Telecommunications Bureau (Bureau) granted for all broadband PCS licensees in August 2000."); *Federal-State Joint Board on Universal Service; Changes to the Board of Directors of ihe National Exchange Carriers Association, Inc.; Petition for Limited Waiver of 47 C.F.R. Sec. 54.7020) Regarding Audit Report Deadline,* Order, 17 FCC Rcd 3698 at ¶¶ 3-4, 7 (Corn. Car. Bur. 2002) *("USAC Waiver")* (granting *USAC* a limited waiver of its audit report filing deadline for the year 2000 where USAC had sought either a permanent waiver or rule change shifting the filing deadline from March 1 to April 15 of each year); *Temporary Waiver afihe Maritime Service Rules, 8* FCC Rcd 34; *MTS and WATS Market Structure; NECA Board of Directors,* Order Granting Waiver, 3 FCC Rcd 4603 (Corn. Car. Bur. 1988) (granting NECA an interim waiver to adjust the composition of its board "pending a decision by the Commission on a Petition for Rule Change" regarding the composition of the NECA board).

[8] *USAC Waiver,* 17 FCC Rcd 3698; *GTE Corporation and Bell Atlantic Corporalion Far Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control ofa Submarine Cable Landing License,* Order, 16 FCC Rcd 14009 at ¶ 5 (Policy and Program Planning Div., Com. Car. Bur. 2001) (granting Verizon a limited waiver of the *Bell Atlantic-GTE Merger Order* conditions to allow a Verizon ILEC and Verizon Advanced Data Inc. to cooperate to provide xDSL service prior to the sunset of the advanced services affiliate requirement, where Verizon sought a permanent waiver) *("Verizon Advanced Services Waiver I"); GTE Corporation and Bell Atlantic Corporation For Consent io Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License,* Order, 16 FCC Rcd 15957 at 7 5 (Policy and Program Planning Div., Com. Car. Bur. 2001) (same) *("Verizon Advanced Services Waiver II")*.

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

[10] *Letterfrom Michael K. Powell, Chairman, Federal Communications Commission, to John Sidgmore, President and CEO, WorldCom, Inc.* (July 22, 2002) at 2 available at http://www.fcc.gov/commissioners/powell/72202_sidgmore.pdf.

THE STCPP REQUIRES A SINGLE PIC-TO-SINGLE PIC MIGRATION AND DEFAULT PROCESS

The Mid-Size Carrier Group's (MSCG) proposal for a Seamless Transition Customer Protection Plan (STCPP) can only be implemented if: (1) the initial migration of end users from the defaulting IXC requires only the change of that carrier's PIC code to a single new PIC code; and (2) migrated end users that do not affirmatively elect a new carrier are defaulted to that single PIC code at the end of the transition period. Any attempt to introduce a balloting mechanism or allocation,methodology into this emergency process will add tremendous complications, costs, delays and burdens, and will vastly increase the risk of errors and end user dissatisfaction. The MSCG believes that these consequences may be so severe as to render the STCPP impracticable for implementation.

First, the time available to implement the STCPP does not permit the prior or parallel employment of a balloting or allocation process. The triggered migration is intended to deal with an emergency situation in which end users face imminent loss of service and providing carriers face a recurrence of non-payment. Because carriers will not know in advance when a triggering default will occur, there is no time available to conduct the mass solicitations, correlations of responses, inputting of customer selections, and addressing of inevitable customer inquiries that would be required to complete a balloting or allocation process prior to the migration. Local exchange carriers lack the customer service and other resources necessary to handle the tens of thousands of customer orders in such a short time span. (Although, theoretically, at least the solicitation of customer choices for alternative carriers could issue immediately upon the filing of a petition in bankruptcy, it is highly likely that a bankruptcy court would not support encouraging a debtor's end users to make even a fallback alternative carrier selection so early in the process because of the destabilizing affect it could have on reorganization prospects.)

Qualifying receiving carriers for and implementing an allocation scheme would encounter many of the same timing problems, and likely would exacerbate other issues as discussed below. Even the 30 days of the proposed transition period would be woefully inadequate to establish and implement either process as compared to the 6-months allotted for the original equal access balloting.

Second, the establishment and carrying out of procedures for solicitation of end users and participating carriers, maintenance and updating of data bases concerning their choices, and implementing those choices on an individual case basis at such time as the plan is triggered would involve substantial additional costs and personnel resources. The MSCG members have already agreed to bear substantial costs associated with the STCPP, including waivers of PIC charges, notices to end users, assignment of customer service personnel to implement transition period carrier change selections, and the like. They cannot from a financial or resource perspective accept responsibility for those additional costs and obligations. Rather, the costs, including for additional customer service personnel, would have to be recovered from other carriers or end users and, to the extent advance planning was required, the costs would have to be incurred and recovered even if a STCPP were never triggered.

Third, complicating the migration plan by introducing multiple PIC changes through balloting or allocation would vastly increase the risk of errors. This risk would increase over time if selections were made early in the bankruptcy process, as bankruptcy proceedings can take years to conclude. Over such a period, consumers will move, change their minds, and change their telephone plans; carriers will go in and out of business and change their service offerings. Any attempt to minimize such errors by periodic re-solicitatipn would multiply the cost increases as well as the complexity of the process, and introduce new opportunities for error.

With respect to a possible allocation process not based on individual end user choices, it is also important to note that, by definition, the end users who will be migrated already have a customer relationship with the local exchange carrier implementing the STCPP. It is, therefore, reasonable to assume that they would be less likely to react adversely to being transitioned to that exchange carrier's long distance affiliate rather than to some long distance provider with which they had no prior relationship. Moreover, although the local exchange carrier already has a billing relationship with such customers, an unrelated long distance provider would have to establish such a relationship at its own cost. It would further be required either to waive its customer acceptance requirements or to introduce an additional step into the process in order to give itself an opportunity to reject an allocated customer.

Finally, providing a no-PIC option at the end of the transition as an alternative to a default to the transition service provider similarly would incur the costs and complexity of a balloting process while also likely increasing the risk of customer dissatisfaction, yet provide no real benefit. Transitioned customers would already have chosen to pre-subscribe to an inter-exchange carrier, and maintaining their transitional pre-subscription would be at no cost to them. In contrast, changing their designation to no-PIC would impose costs on the local exchange carrier for that change that would have to recovered, and could result in the end user being relegated to casual user rates on a dial around basis. Most tellingly, a defaulted end user can always dial around even if they remain pre-subscribed to the transitional service provider, so they lose nothing by remaining in that status until they make an affirmative election otherwise.

Seven Cents Per Minute **Is** a **Very** Favorable
Rate for Users Migrated Under the STCPP

In filings with the Federal Communications Commission ("FCC" or "Commission") in Docket No. 02-202, the Mid-Size Carrier Group has outlined a seamless transition customer protection plan ("STCPP"). The goal of the STCPP is to ensure orderly migration of at-risk end users to alternative service providers in the event of default by financially distressed IXCs or CLECs. The STCPP contains objective triggers for implementation, requires notice to covered end-users, and incorporates various other elements necessary to transition end users **from** one carrier to another. The STCPP also proposes that affected end users receive long distance service from their Mid-Size Carrier Group member, its long distance affiliate, or another eligible long distance provider at a rate of seven cents per minute with no minimum charges **or** monthly fees. As discussed in more detail below, this rate is less than the no-fee and no-minimum rates charged by most companies and would be particularly fair to consumers in the rural areas that Mid-Size Carrier Group members serve and even to those end users that have special deals with their prior IXC.

Consumer Action Studies. Although numerous discount plans feature advertised rates of less than 7 cents per minute, nearly all of those plans impose monthly fees or minimum charges that make them more expensive than 7 cents per minute for most residential users. Consumer Action, a non-profit consumer group, has surveyed dozens of calling plans. In its 1999 study, Consumer Action calculated "effective" per minute rates for various plans assuming 144 interstate long distance minutes per month, a value calculated by the FCC. It further assumed that these minutes were evenly divided between day, evening, and weekend hours since many plans offer different rates at different times of day. Consumer Action found that the effective rate for no-fee long distance plans was 11.5 cents per minute and concluded that most households will pay more than that amount if they choose plans touting rates of 5 cents per minute or less due to monthly fees and minimum charges.

Consumer Action released a follow-up study in October 2001 that surveyed 44 discount long distance plans. The study concluded that 7 cents was the "new standard for fee-based, one-rate calling plans," and the 7 cents per minute plans studied had monthly fees ranging from $1.95 to $4.95 per month. In addition, according to the survey, plans with neither monthly fees nor monthly minimums charged between 8 and 12 cents per minute. Moreover, consumers making 126 minutes of interstate long distance calls per month (evenly divided among day, evening, and weekend hours) pay between $9.66 and $12.77 per month with AT&T; between $9.66 and $15.12 per month with MCI; and between $14.77 and $17.55 per month with Sprint. Under these same assumptions, a customer receiving the STCPP's proposed 7 cents per minute rate with no monthly fees and no minimum charges would pay just $8.82 per month. Therefore, based on this data, the STCPP's proposed 7 cents per minute rate is extremely favorable to the average consumer.

Consumers **In** Rural Areas. Members of the Mid-Size Camer Group serve customers in rural and insular areas. According to NECA's September2002 "Trends In Telecommunications Cost Recovery" report, due to significantly higher line costs and customer bases that are primarily residential, consumers in rural areas pay between 18.5 and 35 cents per minute for long distance service, even though **U.S.** consumers on average pay approximately 50 percent less per minute. Therefore, the STCPP's proposed 7 cents per minute rate with no monthly fees or minimum charges is a good value for all consumers and particularly favorable to consumers in rural areas.

Instability/Disadvantages of Deep Discount Providers. Although numerous companies advertise long distance rates of less than 7 cents per minute, these plans often: (1) have monthly fees or minimum charges; (2) require the customer to "dial-around" their pre-selected IXC; **(3)** require online activation; or **(4)** require prepayment. In addition, although bamers to entry into the long distance market, particularly as a reseller, are relatively **low,** numerous IXCs have gone into bankruptcy afler charging customers unsustainably low rates that did not permit them to make a profit. Chairman Powell commented on this phenomenon in his July 2002 testimony before the Senate Commerce Committee, observing that "revenues are being diluted as price wars and aggressive competition make **it** difficult to secure an adequate return on investment.. .This is particularly acute in the long distance and wireless markets."

Therefore, the STCPP's proposed 7 cents per minute rate with no monthly fees or minimum charges is extremely reasonable for all consumers and particularly favorable for consumers in the rural and insular areas that members of the Mid-Size Carrier Group serve.