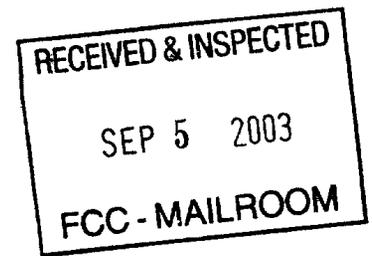




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September 4, 2003

00-257

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington DC, 20554

Dear Ms. Dortch,

Please accept for filing the enclosed Petition of ComTech21, LLC for Approval of a request for a limited waiver of the Commission's Rules applicable to the submission of changes in a subscriber's preferred Carrier. I have enclosed an original and five (5) copies. Please file mark the extra copy and return it to me in the enclosed self-addressed, stamped envelope.

This Petition does not involve the merger of the two companies, but is limited to the transfer of customers from one company to another.

Please contact John Withington, Manager – Regulatory Compliance on 203-679-7257 with any questions or if you require additional information about this filing. Thank you for your assistance in this matter.

Sincerely,

Marie Marcarelli
Executive Vice President
ComTech21, LLC

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

In the Matter of)
)
Implementation of the Subscriber Carrier) CC Docket No. 00-257
Selection Changes Provisions)
Of the Telecommunications Act of 1996)
)
ComTech21, LLC)
Request for Waiver)

PETITION FOR WAIVER

I. Introduction

ComTech21, LLC (“ComTech21” or “Petitioner”) respectfully requests a limited waiver of the Commission’s Rules, 47 C.F.R. §§ 64.1100 through 64.1190 and relevant Commission Orders applicable to the submission of changes in a subscriber’s preferred carrier (collectively hereafter “Rules”). Specifically, ComTech21 seeks a waiver to the extent necessary to permit it to transfer the customers of Moving Bytes, Inc.”MBI” to the Petitioner’s customer base without first obtaining the customers’ authorization and verification.¹

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. 47 C.F.R. § 64.1150.

As demonstrated herein, Petitioner fully satisfies the special circumstances required for a waiver of the Commission's rules as stated in *WAIT Radio v. FCC*. Grant of the instant Petition therefore will serve the public interest.² Moreover, Petitioner's request for a waiver is substantially identical to waivers of these rules previously granted by the Commission to other carriers.³

II. Background

Petitioner currently provides facilities-based and resold interexchange and international telecommunications services to customers throughout the United States. ComTech21 is a Delaware limited liability corporation. ComTech21 is authorized to provide facilities-based or resold intrastate interexchange service in more than 48 states and international service under its Section 214 authority issued by the Commission.⁴

Pursuant to an agreement to be executed with Moving Bytes, Inc, the parties intend to transfer customer accounts to the Petitioner. Petitioner may migrate up to approximately one thousand (1000) customers, representing more than 1000 lines, from Moving Bytes, Inc. to Petitioner. Unless the FCC grants this Petition, these customers' interexchange services may be interrupted or discounted at some point in the future, and the customer may be subject to higher rates.

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

3 *See infra* note 6.

4 *See* ITC-214-20000419 (granted effective June 7, 2000).

In accordance with the Commission's prior Orders in this docket, Petitioner will notify all of the affected Moving Bytes customers prior to their transfer to Petitioner, via a letter that states: (a) the customers will receive the same or better services and rates upon transfer to ComTech21; (b) they have the right to switch to the interexchange carrier of their choice, (c) Petitioner will reimburse a customer for any preferred interexchange carrier change charges incurred from the local exchange carrier ("LEC") if a customer decides to change his or her preferred interstate carrier within 30 days from the transfer date; and (d) customers may contact Petitioner via a toll-free number with any questions regarding the transfer.⁵ ComTech21 will also amend its FCC tariffs, if necessary, to include the applicable Moving Bytes, Inc. services and rates for these customers. After consummation of the sale, Petitioner will send another notification letter welcoming customers to Petitioner and reiterating statements (a) through (d) above. Sample notification letters are attached as Exhibit A to this Request for Waiver of the Commission's Rules.

III. Special Circumstances Exist to Grant the Instant Waiver Request

The FCC has authority to waive a rule if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. *WAIT Radio* at 1159; *Northeast Cellular Telephone Co.* at 1166. The Petitioner asserts that special circumstances exist for waiver of 47 C.F.R. §§ 64.1100 through 64.1190. First, a waiver of these rules will enable

4 *See infra* note 6.

customers to continue to receive the same services and the same or better rates from Petitioner without a possible disruption in service. In addition, requiring Petitioner to obtain verifications from each of these approximately One-Thousand (1000) customers before it can begin to provide them service may delay the transfer to Petitioner, interrupt customers' services, and preclude their ability to make interexchange and international calls.

Waiver of these rules will serve the public interest because all Moving Bytes, Inc. customers switched to Petitioner will receive prior notification of the change in carriers, be informed of their ability to select the interexchange carrier of their choice, be reimbursed for any preferred carrier change charges imposed by LECs, and be given a toll-free number to contact Petitioner with any questions regarding the transition. Moreover, after customers are switched to Petitioner, they will receive a second letter again informing them of this information. These letters will ensure that customers are informed of the process and that their rights are adequately protected. By granting the transfer of these customers via notification as described in this Petition, the Commission will ensure that the underlying policy goals of the carrier change rules are served in a more efficient fashion that will permit Petitioner to seamlessly transfer One Thousand (1000) customers to Petitioner without any disruption in service.

Furthermore, 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.⁶ Where: (1) an interexchange carrier has entered into an agreement to purchase assets, including the customer base, from another interexchange carrier, and (2) the purchasing carrier has pledged to notify the customers of the change in providers, and (3) waiver of the Commission's authorization and verification rules would permit a smooth transition between providers, without a loss of service or rates, the Commission has consistently found that the special circumstances exist warranting a waiver, and that grant of the waiver would serve the public interest.

IV. Conclusion

Petitioner respectfully requests that the Commission grant a limited waiver of the authorization and verification requirements of the Commission's Rules, 47 C.F.R. §§ 64.1100 through 64.1190, and relevant Orders to the extent necessary to permit the Petitioner to transfer selected customers of Moving Bytes, Inc. to the Petitioner's customer base without first obtaining the customers' authorization and verification. For the reasons stated herein, grant of this request for a waiver of the Commission's Rules is in the public interest.⁷

⁶ See Orders issued in *Implementation of Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, International Exchange Commissions, Inc. Request for Waiver*, Order, CC Docket No. 94-129, granting waiver of the Commission's authorization and verification requirement to various carriers, including US West Communications, Inc. (DA 00-1690, rel. July 28, 2000) and Telephone USA of Wisconsin, LLC (DA 00-1679, rel. July 28, 2000).

⁷ See, e.g., *International Exchange Communications, Inc. Request for Waiver*, Order, CC Docket No. 94-129, DA 99-1549 (rel. Sept. 10, 1999); *MCI WorldCom Inc. Request for waiver*, Order, CC Docket No. 94-129, DA 99-1819 (rel. Aug. 6, 1999).

Respectfully Submitted,

By: Marie Marcarelli
Marie Marcarelli
Executive Vice President
ComTech21
One Barnes Park South
Wallingford, CT. 06492
Telephone: 203-679-7293

Date: 9/2/03

ATTACHMENT A
CUSTOMER NOTIFICATION LETTERS

COMTECH21, LLC

NOTICE OF CHANGE IN LONG DISTANCE SERVICE PROVIDERS

CURRENT DATE

Dear Current Moving Bytes Customer:

ComTech21 and Moving Bytes, Inc. are pleased to announce that as of October 15, 2003, Moving Bytes Inc. will transfer its retail customers to ComTech21. Through this agreement between ComTech21 and Moving Bytes, Inc., ComTech21 will begin providing long distance services to the customers of Moving Bytes, Inc.

Please note the following important information:

1. ComTech21 will provide you with the same or better high quality telecommunications services as Moving Bytes Inc.
2. The long distance services will be provided at the same or better rates than you currently receive from Moving Bytes, Inc.
3. In the event that you would prefer to use another company as your long distance carrier, you have the right to switch to a long distance carrier of your choice.
4. ComTech21 will reimburse you for any primary long distance carrier change charges imposed by your local exchange carrier.
5. You may contact ComTech21 at its toll-free number, 1-800-987-1100, with any questions regarding your change in service to ComTech21.
6. In the event that you make no change to your long distance service by October 15, 2003, you will be considered to have acquiesced to receiving your service from ComTech21.

ComTech21 extends a special welcome to all Moving Bytes, Inc customers. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call ComTech21 at its toll-free customer service number, 1-800-987-1100, if you have any concerns or questions.

Sincerely,

Customer Service Manager

COMTECH21, LLC

NOTICE OF CHANGE IN LONG DISTANCE SERVICE PROVIDER

CURRENT DATE

Dear Long Distance Customer formerly served by Moving Bytes, Inc:

ComTech21 is pleased that, as of October 15, 2003, you have begun receiving long distance service from ComTech21. Through an agreement between ComTech21 and Moving Bytes, Inc. ComTech21 has begun providing long distance services to the customers of Moving Bytes, Inc.

In order to make this transition as comfortable to you as possible, we would like you to be aware of the following important information:

1. ComTech21 will provide you with the same or better high quality telecommunications services as Moving Bytes, Inc. did.
2. The long distance services will be provided at the same or better rates than you previously received from Moving Bytes, Inc.
3. In the event that you would prefer to use another company as your long distance carrier, you have the right to switch to a long distance carrier of your choice.
4. ComTech21 will reimburse you for any primary long distance carrier change charges imposed by your local exchange carrier in connection with this change.
5. You may contact ComTech21 at its toll-free number, 1-800-987-1100, with any questions regarding your change in service to ComTech21.

ComTech21 extends a special welcome to all former Moving Bytes, Inc. customers. We realize you have a choice of telecommunications carriers, and we appreciate your business. Please call ComTech21 at its toll-free customer service number, 1-800-987-1100 if you have any concerns or questions.

Sincerely,

Customer Service Manager