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

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| In the Matter of | ) | |
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| 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 |
| | ) | |
| Verizon New York, Inc. | ) | |
| | ) | |
| Petition for Waiver | ) | |

**ORDER**

**Adopted: March 16, 2006** **Released: March 17, 2006**

By the Chief, Consumer Policy Division, 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 Verizon New York, Inc. (Verizon) a limited waiver of these rules. We grant this waiver to the extent necessary to enable Verizon, without complying precisely with the Commission's streamlined procedures, to become the presubscribed provider of local service to customers of a competitive local exchange carrier that has been unable to pay its bills.

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 February 17, 2006, Verizon filed with the Commission a 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 customers from Econ-o-Call to Verizon.[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

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[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); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116, (rel. May 23, 2003). 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 filed with the Commission by Verizon in CC Docket Nos. 94-129 and 00-257 on February 17, 2006.

[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 Verizon has demonstrated that good cause exists to justify a limited waiver of the Commission's requirements to the extent necessary to enable Verizon to transfer to its own customer base the affected Econ-o-Call customers. According to the Petition, the New York Public Service Commission asked Verizon to become the default carrier for approximately 10 Econ-o-Call customers in New York.[14] Verizon states that it has not yet sent advance notice to the affected customers that complies with Section 64.1120(e)(3) of our rules as they do not yet have the list of customers who will be switched by default to Verizon; however, Verizon expects to know shortly which customers will default to Verizon and will promptly send those customers the notification required by Commission's rules.

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.[15] Given the special circumstances Verizon has described, compliance with the 30-day advance notice requirement could potentially result in the loss of local service for Econ-o-Call customers during the 30-day period. Moreover, Verizon is the default carrier in New York and is therefore required to provide service to the former Econ-o-Call customers in those states.[16] 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."[17] 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. 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.

8. For the foregoing reasons, we grant Verizon 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 Verizon'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.

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[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] *See* Petition at 1.

[15] 47 C.F.R. §§ 64.1120(e)(1) &(e)(3).

[16] *See* Petition at 1.

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

## III. ORDERING CLAUSES

9. 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 Verizon New York, Inc., on February 17, 2006, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Erica H. McMahon

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Consumer Policy Division
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