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

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In the Matter of)
)
Mid America Computer Corporation Petition for)
Expedited Interim Waiver)
)
Rules and Regulations Implementing Minimum)
Customer Account Record Exchange Obligations)
on All Local and Interexchange Carriers)

CG Docket No. 02-386

FCC Mail Room

ORDER

Adopted: March 28, 2006

Released: March 29, 2006

By the Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order, we deny Mid America Computer Corporation's (Mid America's) Petition for Expedited Interim Waiver of certain portions of section 64.4002 of the Commission's Customer Account Record Exchange (CARE) rules.

II. BACKGROUND

2. On February 25, 2005, the Commission released an order establishing mandatory, minimum standards governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs).¹ In the *CARE Order*, the Commission required LECs to supply customer account information to an IXC in a defined set of circumstances, including as relevant here: (1) when a LEC places a customer on the network of the customer's preferred interexchange carrier (PIC) at the customer's request; and (2) when a LEC confirms or rejects an IXC-initiated PIC order.²

3. On November 21, 2005, Mid America filed a Petition for an Expedited Interim Waiver (*Petition*)³ of certain customer account record exchange requirements.⁴ In its petition, Mid America explains that it provides billing and data processing services to approximately 275 small rural incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs).⁵ Mid America requests,

¹ *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on all Local and Interexchange Carriers*, CG Docket No. 02-386, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4560 (2005) (*CARE Order*).

² *CARE Order*, 20 FCC Rcd at 4573-74, paras. 32-33, 37-38.

³ *Mid America Computer Corporation Petition for Expedited Interim Waiver*, CG Docket 02-386, filed November 21, 2005. See also *Consumer & Governmental Affairs Bureau Seeks Comment on Mid America Computer Corporation's Petition for Expedited Interim Waiver of Section 64.4002 of the Commission's Customer Account Record Exchange Rules*, Public Notice, CG Docket No. 02-386, DA 05-3174 (rel. Dec. 12, 2005).

⁴ See 47 C.F.R. § 64.4002(a)(7) and (c) (hereinafter referred to as "*CARE rules*").

⁵ *Petition* at 2.

on behalf of the carriers for which it provides billing and data processing services, an interim waiver of two CARE requirements. First, it seeks a waiver, until September 1, 2006, of section 64.4002(a)(7) of the Commission's rules to the extent that that section requires a LEC that has received a customer-submitted PIC order to notify the PIC if the customer's account is subject to a PIC freeze.⁶ Second, it seeks a waiver, until September 1, 2006, of section 64.4002(c) of the Commission's rules, which requires a LEC that has rejected an IXC-submitted PIC order to notify the IXC of the PIC order rejection.⁷

4. According to Mid America, it must undertake additional programming and software changes in order to comply fully with the CARE rules.⁸ Mid America contends that the waiver is necessary to allow it sufficient time to complete development of the software in a cost-effective manner with a minimum amount of expense to its small and rural clients.⁹

5. AT&T and Sprint Nextel filed oppositions to Mid America's Petition, contending that no special circumstances exist that warrant a deviation from the CARE rules, and that Mid America has failed to justify why its inability to update its software warrants a waiver of the information exchange requirements for its LEC clients.¹⁰

6. In a Reply to these oppositions, Mid America emphasizes that while it has been working to perfect its software solution, its clients were advised to manually provide the required CARE information to IXCs in accordance with the CARE rules.¹¹ In addition, Mid America states that it has developed the necessary programming changes more quickly than expected, and its software release is now "imminent."¹²

III. DISCUSSION

7. For the reasons set forth below, we deny Mid America's petition for a waiver of section 64.4002(a)(7) and (c) of the CARE rules. Generally, the Commission's rules may be waived for good cause shown.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ The Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵

⁶ A PIC freeze prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express written or oral consent. 47 C.F.R. § 64.1190(a).

⁷ Petition at 2. See also 47 C.F.R. § 64.4002(a)(7) and (c).

⁸ *Id.* at 1.

⁹ *Id.* Mid America states that it is "attempting to combine and incorporate programming changes for new requirements in its regularly-scheduled releases of its operating support system product and thus, limiting the cost to the client, rather than issuing numerous updates which would be costly to its clients." Petition at 2.

¹⁰ Opposition of AT&T Inc. to Mid America Computer Corporation's Petition for Expedited Interim Waiver, CG Docket 02-386, filed February 2, 2006 (AT&T Comments) at 2-4; Comments of Sprint Nextel Corporation, CG Docket 02-386, filed February 2, 2006 (Sprint Nextel Comments) at 2-3.

¹¹ Reply of Mid America Computer Corporation, CG Docket No. 02-386, filed February 13, 2006 at 1.

¹² *Id.* at 1. (stating that "[a]lthough MACC anticipates some additional time for scheduling and testing of the software by client companies, all LEC clients who desire the software should have it much sooner than September 1, 2006").

¹³ 47 C.F.R. § 1.3.

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *WAIT Radio*, 418 F.2d at 1157.

8. As noted by AT&T and Sprint Nextel, alternative methods for exchanging customer data are available to Mid America's clients.¹⁶ Mid America itself acknowledges that it has advised its clients to use alternative data exchange methods, and it has presented no information or evidence that would lead us to conclude that such alternative methods, including facsimile, U.S. mail, overnight mail, e-mail, or cartridge, are not being used by the carriers to comply with the Commission's data exchange requirements. Therefore, as an initial matter, we fail to see the need for a waiver of the rules.

9. Moreover, we find no special circumstances that would warrant a waiver of the rules. In promulgating the *CARE rules*, the Commission specifically considered the potential hardships faced by small and rural carriers.¹⁷ The Commission attempted to minimize any potential costs or burdens for rural and small carriers by refraining from mandating any particular format or transmission medium in connection with the required exchange of customer data.¹⁸ Instead, the Commission stated that the most important aspect of the *CARE rules* is that the information is exchanged.¹⁹

10. In addition, the *CARE rules* were adopted to help ensure that consumers' phone bills are accurate and that their carrier selection requests are honored and executed without undue delay.²⁰ According to Sprint Nextel, if a PIC order is rejected without explanation, the IXC's ability to correct the problem and re-submit the order in a timely manner will be compromised.²¹ AT&T agrees, maintaining that the IXC would have no way of knowing if an order was rejected due to a freeze, unless or until a customer so notifies the IXC.²² We are persuaded by these arguments. For these reasons, we believe that a waiver of the requirement to notify the IXC of a rejection of a PIC change order would not be in the public interest.

11. Finally, we agree with AT&T that Mid America's clients have had a reasonable period of time to come into compliance with the *CARE rules*.²³ The Commission released its *CARE Order* on February 25, 2005, and the rules were published in the Federal Register on June 2, 2005.²⁴ Following the Office of Management and Budget's (OMB) approval of the information collection requirements, the rules became effective on September 21, 2005.²⁵ Therefore, we believe that small and rural LECs have had sufficient time to take steps to comply with the *CARE rules*.

12. Accordingly, we find that Mid America has failed to demonstrate good cause to waive the *CARE rules* for an interim period and that such a waiver would be inconsistent with the public interest. We therefore deny Mid America's Petition for an Expedited Interim Waiver of the *CARE rules*, section 64.4002(a)(7) and (c). We are encouraged that Mid America's software development is progressing ahead of schedule. Until it is completed, however, the LECs and CLECs for whom Mid America provides data

¹⁶ AT&T Comments at 5; Sprint Nextel Comments at 3.

¹⁷ See *CARE Order*, 20 FCC Rcd at 4581.

¹⁸ *Id.* ("By focusing on information exchanges in particular circumstances rather than on mandating specific formats or transmission mediums for those exchanges, we have attempted to minimize the potential costs or burdens associated with implementing these requirements, particularly for small and rural carriers").

¹⁹ *Id.*

²⁰ See *CARE Order*, 20 FCC Rcd at 4581.

²¹ Sprint Nextel Comments at 3; see also AT&T Comments at 4.

²² AT&T Comments at 4.

²³ See AT&T Comments at 3.

²⁴ *CARE Order*, 20 FCC Rcd at 4560. See also 70 Fed. Reg. 32258 (June 2, 2005).

²⁵ FCC Announces OMB Approval of Customer Account Record Exchange Rules, Public Notice, CG Docket No. 02-386, DA 05-2405 (rel. Sept. 2, 2005); see also 70 Fed. Reg. 55302 (Sept. 21, 2005).

processing services must provide the information required by section 64.4002(a)(7) and (c) in some other manner and in a timely fashion.

IV. ORDERING CLAUSES

13. Accordingly, pursuant to authority contained in sections 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201, 202, 222, 258, and 303(r), and the authority delegated under sections 0.141, 0.361, and 1.3 of the Commission's rules, the Petition for an Expedited Interim Waiver relating to 47 C.F.R. § 64.4002(a)(7) and (c), filed by Mid America Computer Corporation on November 21, 2005, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Monica Desai
Chief, Consumer & Governmental Affairs Bureau