

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	CC Docket No. 94-129
Selection Changes Provisions of the)	
Telecommunications act of 1996)	
)	
Policies and Rules Concerning Unauthorized)	CC Docket No. 00-257
Changes of Consumers Long Distance Carriers)	

**PETITION OF WARWICK VALLEY MOBILE TELEPHONE COMPANY, INC. D/B/A
WVT BUSINESS COMMUNICATIONS FOR WAIVER OF THE ADVANCE
NOTIFICATION REQUIREMENTS OF 47 C.F.R. § 64.1120(e)**

Warwick Valley Mobile Telephone Company, Inc. d/b/a WVT Business

Communications (“Warwick”) respectfully requests that the Commission expeditiously grant Warwick a waiver of the 30-day advance notice requirement in 47 C.F.R. § 64.1120(e) so that Warwick may provide wholesale telecommunications services to the customers of USD CLEC, Inc. a/k/a USA Datanet, Debtor-in-Possession (“USA Datanet,” and together with Warwick, “Petitioners”) who do not select a new wholesale service provider prior to April 1, 2009. On March 11, 2009, the U.S. Bankruptcy Court for the Northern District of New York (the “Bankruptcy Court”) approved the sale of assets to Warwick. Consistent with an Asset Purchase Agreement, the proposed transaction is scheduled to close on April 1, 2009,¹ when USA Datanet

¹ Applicant notes that its bid to acquire USD CLEC DIP has been orally approved by the bankruptcy court. Applicant further notes that the closing of this transaction is currently scheduled for April 1, 2009, but is contingent upon a positive outcome of Conditions of Sale, including a final written court order, consents and approvals by governmental authorities, and modification and cure of selected USD CLEC DIP contracts at a specified cap, among other conditions.

will cease providing wholesale telecommunications services to its customers who will be transferred to Warwick, along with certain other assets.²

The Petitioners will mail notice to the affected customers on or before March 27, 2009, explaining that they must select a new provider by April 1, 2009 or they will be automatically migrated to Warwick. A copy of this letter is appended hereto as *Exhibit A*. Despite this notification, some affected customers may not select a new wholesale provider by April 1, 2009, and thus, they will lose service entirely unless the Commission grants a waiver of the 30-day advance notification requirement. A waiver of the 30-day advance notice requirement will allow a “seamless transition of service”³ from USA Datanet to Warwick⁴ so that affected customers do not lose service on April 1, 2009. For these reasons, granting this waiver request is in the public interest.

USA Datanet is engaged in the business of providing nationwide integrated VoIP PRI on a wholesale basis. There are fewer than twenty (20) wholesale customers that are expected to be transferred to Warwick. These customers are located in the following states (some with multiple locations in various states): Arkansas, California, Colorado, Delaware, District of Columbia, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Vermont, Virginia, Washington and Wisconsin. The Debtors filed for Chapter 11 bankruptcy on October 3, 2008. USA Datanet notified both the Commission and the New York Public Service Commission (“NY PSC”) regarding the bankruptcy and has been in touch with the NY PSC with

² See Case Nos. 08-32560 through 32562. In addition to USD CLEC, Inc., the Debtors include its parent company, US Datanet Corporation, and its affiliate, USD Management and Network Services, Inc. (collectively, the “Debtors”).

³ *Subscriber Carrier Selection Changes*, Order, 16 FCC Rcd 11218 ¶ 10 (2001).

⁴ Subject to the contingencies outlined in fn. 1.

respect to the potential for either a discontinuance of wholesale service or a transfer of assets and customers to another provider. Just days ago, the Bankruptcy Court approved the sale of assets to Warwick. The Petitioners are acting as quickly as possible, and on March 19, 2009, filed with the NY PSC an application for a CPCN and a request for an order approving the transfer of assets and customers from USA Datanet to Warwick on an expedited basis. As noted above, the Petitioners will be sending notice to the affected wholesale customers informing them of the anticipated migration and their rights with respect to the migration.

The Commission's streamlined procedures for acquiring part or all of another carrier's subscriber base would require Warwick to notify both the Commission and the affected wholesale subscribers of the carrier change. *See* 47 C.F.R. § 64.1120(e). Relevant to this Petition, the rules require at least 30 days' advance notice to both the Commission and the affected wholesale customers. *See id.* § 64.1120(e)(1), (e)(3). To comply with this requirement, Warwick would have to wait 30 days before being able to provide service to the affected wholesale customers; however, this is not possible because the sale is expected to close on April 1, 2009, which requires a waiver of the 30-day advance notice requirement. Without a waiver, the earliest date by which Warwick would start service would be mid-to-late April. Loss of wholesale service for such a lengthy period of time is not in the public interest.

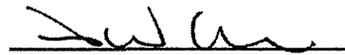
In *Verizon New York Inc. Petition for Waiver*, Order, 21 FCC Rcd 2457 (2006), the Consumer and Governmental Affairs Bureau granted Verizon's request for a waiver of the 30-day advance notice requirement, finding that a waiver was in the public interest because compliance "could potentially result in the loss of local service for [the CLEC's] customers during the 30-day period" and found it "unlikely that the affected subscribers will suffer harm" from receiving less notice. *Id.* ¶ 7. The benefits of a seamless transition of service provider

outweighed the fact that customers would get less than 30 days notice. Here, absent a waiver, wholesale customers will lose service altogether. Unquestionably, they will be harmed far more by this outage than by receiving less than 30 days notice of the change in service provider. Thus, the public interest will be served by granting the Petitioners a waiver as requested.

CONCLUSION

For the foregoing reasons, the Commission should grant Warwick a waiver of the 30-day advance notice requirement in 47 C.F.R. § 64.1120(e) so that affected USA Datanet wholesale customers who do not select another carrier by April 1, 2009 can be transferred to Warwick without losing service.

Respectfully submitted,



Duane Albro
President
Warwick Valley Mobile Telephone
Company, Inc. d/b/a WVT Business
Communications
47 Main Street
Warwick, New York 10990
(845) 986-2100

Date: March __, 2009

[INCLUDE COMPANY LOGOS WITH ADDRESSES]

[INSERT DATE]

IMPORTANT NOTICE REGARDING YOUR COMMUNICATIONS SERVICE

Dear USA Datanet Customer:

In order to ensure that you continue to receive high quality service, we are pleased to inform you that USA Datanet has entered into an agreement for you to become a customer of WVT Business Communications, a subsidiary of Warwick Valley Telephone Company. The anticipated date for the transfer of your service is April 1, 2009, or as soon thereafter as the necessary governmental approvals can be obtained and all other contingencies of the agreement satisfied.

Warwick provides local and long distance telephone services to residential and business customers, access billing and collection services to other carriers, and Internet access and video services to customers in New York and New Jersey. Warwick intends to continue the fine level of customer service you expect and have received from USA Datanet.

No action on your part is required.

You will continue to use the same telephone numbers you currently do, and there will be no fees applied in connection with the transfer of your service. As a WVT Business Communications customer, you will continue to receive your same services at the same rates, terms and conditions as at present. Notice of any future changes in rates, terms and conditions of service will be provided to you as required by law.

Warwick anticipates that the date for the transfer will be on or about April 1, 2009, provided that the necessary regulatory approvals have been obtained and all other contingencies of the agreement satisfied. At that time, WVT Business Communications will become your service provider. USA Datanet realizes that you may choose another carrier. Again, no action is required on your part and your service will continue at the same rates.

If you have placed a "freeze" on your USA Datanet services to prevent their unauthorized transfer to another carrier, it will be automatically lifted to implement the transfer to WVT Business Communications. You must contact your new local service provider (WVT Business Communications or other local service provider that you choose) to reestablish freeze protection for you after the transfer.

If you have any questions or concerns with respect to service needs, complaints or billing issues, you can call Warwick at [TOLL FREE] or prior to the transfer call USA Datanet at [TOLL FREE].

We look forward to serving you!

Cordially,

[INSERT NAME]

WVT Business Communications

[INSERT NAME]

USA Datanet

[INCLUDE COMPANY LOGOS WITH ADDRESSES]

[INSERT DATE]

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We look forward to serving you!

Cordially,

[INSERT NAME]

WVT Business Communications

[INSERT NAME]

USA Datanet