

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

In the Matter of)	
)	
Implementation of the Subscriber Carrier)	
Selection Changes Provisions of the)	CC Docket No. 94-129
Telecommunications Act of 1996)	
)	
OnePoint Communications Corp.,)	
Talk.com, Inc., and Talk.Com Holding Corp.,)	
d/b/a The Phone Company)	
Joint Petition for Waiver)	

ORDER

Adopted: October 30, 2000

Released: October 31, 2000

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant OnePoint Communications Corporation, Talk.Com, Inc., and Talk.Com Holding Corp., d/b/a The Phone Company (collectively, Petitioners) a limited waiver of the authorization and verification

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), 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*, FCC 00-135 (released May 3, 2000); 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 00-255 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *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) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the extent necessary to enable Talk.Com to become the preferred carrier of the consumers currently presubscribed to OnePoint, without first obtaining each customer's authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. The Petitioners seek a waiver of our verification rules to allow Talk.Com to be designated the preferred interLATA and international toll carrier for certain customers of OnePoint without first obtaining each customer's authorization and verification.⁷ Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Talk.Com and OnePoint a waiver, subject to the conditions represented in their filings.

³ On September 8, 2000, OnePoint Communications Corp. (OnePoint), a subsidiary of Ventures in Communications II, L.L.C., joined Talk.Com, Inc. and Talk.Com Holding Corporation, d/b/a The Phone Company (collectively, Talk.Com) in filing a Joint Petition for Waiver (Waiver Petition) relating to Talk.Com's acquisition of the long distance subscriber base of OnePoint. On October 25, 2000, the Petitioners filed a Supplement to the Waiver Petition, which includes, among other things, a draft of a post-transfer customer notification letter. (Supplement). On October 30, 2000, the Petitioners filed a Second Supplement to the Waiver Petition which includes a revised draft post-transfer customer notification letter. (Second Supplement).

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ The affected OnePoint customers are located in Maryland, Virginia, Pennsylvania, Delaware, and Washington, D.C.

II. DISCUSSION

4. 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 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

5. We find that Talk.Com and OnePoint have demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Talk.Com to transfer to its own customer base the affected OnePoint customers. The Petitioners state that they filed the Waiver Petition in preparation for the proposed acquisition of OnePoint by Verizon Investments, Inc., a wholly-owned subsidiary of Bell Atlantic Corporation d/b/a Verizon Communications.¹³ Upon completion of the acquisition, the Petitioners state that OnePoint will become subject to the regulatory requirements that prohibit Verizon from offering originating interLATA services in its local region until it has met the requirements of Section 271 of the Telecommunications Act of 1996.¹⁴ Pursuant to this transaction, the Petitioners assert that OnePoint will undertake a multi-step notification process to inform present customers that OnePoint will no longer be their long distance carrier, and that they must select a new long distance carrier.¹⁵ Because some customers may fail to choose a new long distance carrier in a timely manner, OnePoint has arranged to transfer these customers to Talk.Com in order to ensure that these customers do not suffer any service interruptions.¹⁶

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former Onepoint customers might temporarily be interrupted when OnePoint ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay

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).

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 Waiver Petition at 2.

¹⁴ Waiver Petition at 2-3.

¹⁵ Waiver Petition at 3-4.

¹⁶ Waiver Petition at 3-4.

potentially higher rates after the discontinuance of service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that the Petitioners have demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing long distance service, and because Talk.Com and OnePoint have agreed to notify the affected customers as described below. As noted above, the Petitioners state that they will undertake a multi-step process to notify the affected customers that they need to choose a new long distance carrier.¹⁷ In each pre-transfer notification, OnePoint will inform customers of the proposed transaction, and assure them that no charges or rate increases will be assessed in connection with the transfer from OnePoint to Talk.Com.¹⁸ The Petitioners state that they will also advise the affected customers that they are free to choose a different preferred carrier, should they desire to do so.¹⁹ In addition, customers will be given a toll-free number to call with any questions they may have about the transition.²⁰ Once the proposed transfer has been consummated, Talk.Com will notify these customers of that event and reiterate the foregoing information, assurances, and advice.²¹ In addition, the Petitioners state that they will cooperate with the Commission to investigate and resolve any outstanding complaints of affected customers regarding services provided by OnePoint.²² We conclude that these conditions will adequately protect the rights of the transferred customers of OnePoint.

8. For the foregoing reasons, we grant the Petitioners a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon the Petitioners' provision of customer notification and handling of complaints, as described above and further detailed in the Waiver Petition and Supplements.

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 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91,

¹⁷ Waiver Petition at 3-4.

¹⁸ Talk.Com and OnePoint filed sample notification letters. *See* Waiver Petition, Attachment A; Second Supplement, Attachment. (Notification Letters).

¹⁹ Waiver Petition at 4, 6. According to the Petition, OnePoint will waive any charges associated with a customer's transition to a new carrier, including any charges for removing the customer's presubscribed carrier selection (PIC restriction) or any toll restrictions. Waiver Petition at n.7.

²⁰ *See* Notification Letters.

²¹ *See* Notification Letters.

²² Supplement at 2.

0.291, 1.3, the waiver request filed by OnePoint Communications Corp., Talk.Com, Inc., and Talk.Com Holding Corp., d/b/a The Phone Company, on September 8, 2000, and supplemented on October 25, 2000 and October 30, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters
Associate Chief, Accounting Policy Division,
Common Carrier Bureau