

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

In the Matter of
Implementation of the Subscriber Carrier
Selection Changes Provisions of the
Telecommunications Act of 1996
WORLDCOM, Inc.
Petition for Expedited Waiver
CC Docket No. 94-129

ORDER

Adopted: December 8, 2000

Released: December 11, 2000

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

I. INTRODUCTION AND BACKGROUND

1. In its Carrier Change Orders, the Commission adopted rules applicable to carriers changing a consumer's preferred carrier. In this Order, we grant WORLDCOM, Inc. (WorldCom) a limited waiver of the authorization and verification requirements of the Commission's rules and Carrier Change Orders. We grant this limited waiver to the extent

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, 15 FCC Rcd 8158 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 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 15966 (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.

3 On October 16, 2000, Worldcom filed a Petition for Expedited Waiver on behalf of MCI WorldCom Communications, Inc. (MCI WorldCom), a wholly owned subsidiary of Worldcom, relating to MCI WorldCom's (continued....)

necessary to enable MCI WorldCom to become the preferred long distance carrier of the consumers currently presubscribed to Touch 1 Long Distance, Inc. (Touch 1), without first obtaining the consumers' 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. WorldCom seeks a waiver of our verification rules to allow MCI WorldCom to be designated the preferred long distance carrier for the customers of Touch 1 without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant WorldCom a waiver, subject to the conditions represented in its filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸

acquisition of the customer base of Touch 1 Long Distance, Inc. (Waiver Petition). Touch 1 Long Distance, Inc. is also a wholly owned subsidiary of Worldcom. On October 17, 2000, Worldcom filed the attachments to the Waiver Petition, which had been inadvertently omitted. On December 4, 2000, Worldcom supplemented the Waiver Petition (Supplement) with a copy of its revised post-transfer customer notification letter (Attachment 2).

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. § 64.1120(c).

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁰ 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.¹¹

5. We find that WorldCom has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable MCI WorldCom to transfer to its own customer base the affected Touch 1 long distance customers. In the Waiver Petition, WorldCom states that, due to corporate restructuring, WorldCom would like to discontinue providing service under the Touch 1 name and would like to transfer the Touch 1 customers to MCI WorldCom.¹² According to WorldCom, this conversion will take place on December 16, 2000, if the required authorizations have been granted.¹³ At the time of the conversion, Touch 1 will cease to exist, and MCI WorldCom will remain the surviving entity.¹⁴

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former Touch 1 customers might temporarily be interrupted when Touch 1 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 potentially higher casual calling rates after the discontinuance of presubscribed 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 WorldCom has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because WorldCom has agreed to notify the affected customers as described below. Specifically, WorldCom states that the parties to the transfer will undertake a two-step process to notify the affected customers of the transfer. In a first letter, Touch 1 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 Touch 1 to MCI WorldCom.¹⁵ WorldCom states that Touch 1 will also advise the affected customers that they are

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 1-2.

¹³ Waiver Petition at 2.

¹⁴ Waiver Petition at 2.

¹⁵ WorldCom filed sample notification letters. See Waiver Petition, Attachment 1 (filed October 17, 2000); Supplement, Attachment 2. (Notification Letters).

free to choose a different preferred carrier, should they desire to do so.¹⁶ In addition, customers will be given a toll-free number to call with any questions they may have about the transition.¹⁷ Once the proposed transfer has been consummated, MCI WorldCom will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁸ In addition, according to the Waiver Petition, MCI WorldCom will investigate, respond to, and attempt to resolve any outstanding complaints of affected customers regarding services provided by Touch 1.¹⁹ We conclude that these conditions will adequately protect the rights of the transferred customers of Touch 1.

8. For the foregoing reasons, we grant WorldCom 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 provision of customer notification and the handling of complaints, as described above and further detailed in the Waiver Petition and Supplement.

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, 0.291, 1.3, the waiver request filed by WORLDCOM, Inc. on October 16, 2000, and October 17, 2000, and supplemented on December 4, 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

¹⁶ Waiver Petition at 2-3; Notification Letters.

¹⁷ See Notification Letters.

¹⁸ See Waiver Petition at 3; Notification Letters.

¹⁹ Waiver Petition at 3.