

**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	)	
	)	
Qwest Corporation, All West	)	
Communications, Inc., All West World	)	
Connect, Carbon/Emery Telcom, Inc., Central	)	
Telcom Services, Central Utah Telephone,	)	
Inc., Emery Telcom, Hanksville Telcom, Inc.,	)	
Manti Long Distance, Manti Telephone	)	
Company, Skyline Telecom, UBET Telecom,	)	
Inc., and Uintah Basin Long Distance	)	
	)	
Joint Petition for Waiver	)	

**ORDER**

**Adopted: December 21, 2000**

**Released: December 22, 2000**

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

**I. INTRODUCTION AND BACKGROUND**

1. In its *Carrier Change Orders*,<sup>1</sup> the Commission adopted rules applicable to

---

<sup>1</sup> *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 (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 (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*.

carriers changing a consumer's preferred carrier.<sup>2</sup> In this Order, we grant Qwest Corporation (Qwest) and All West Communications, Inc., All West World Connect, Carbon/Emery Telcom, Inc., Central Telcom Services, Central Utah Telephone, Inc., Emery Telcom, Hanksville Telcom, Inc., Manti Long Distance, Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc., and Uintah Basin Long Distance (Acquiring Companies) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.<sup>3</sup> We grant this limited waiver to the extent necessary to enable the Acquiring Companies to become the preferred carriers of certain consumers currently presubscribed to Qwest in twelve Utah exchanges, 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."<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

3. Qwest and the Acquiring Carriers seek a waiver of our verification rules to allow the Acquiring Carriers to be designated the preferred local carriers for certain customers of Qwest without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to do so, we grant Qwest and the

---

<sup>2</sup> 47 C.F.R. §§ 64.1100 - 64.1190.

<sup>3</sup> On November 9, 2000, Qwest and the Acquiring Companies filed a Joint Petition for Waiver of the Commission's carrier change rules relating to the transfer from Qwest to the Acquiring Companies of the local subscriber base for 12 exchanges in Utah, totaling approximately 35,600 access lines (Waiver Petition). On December 21, 2000, Qwest supplemented the Waiver Petition (Supplement) with a draft copy of the post-transfer customer "welcome letter" that will be used by the Acquiring Carriers.

<sup>4</sup> 47 U.S.C. § 258.

<sup>5</sup> 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*, 14 FCC Rcd at 1593,1594, 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).

<sup>6</sup> 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.

Acquiring Carriers a waiver, subject to the conditions represented in their filings.

## II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.<sup>7</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>8</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>9</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>10</sup> 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.<sup>11</sup>

5. We find that Qwest and the Acquiring Carriers 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 the Acquiring Carriers to transfer to their own customer bases the affected Qwest customers. In the Waiver Petition, Qwest and the Acquiring Carriers state that Qwest seeks to delete twelve exchanges containing approximately 35,600 access lines from its Utah study area and transfer those lines to the twelve Acquiring Carriers, one exchange per carrier. The Acquiring Carriers will acquire substantially all of Qwest's assets used to provide local telecommunications services to those lines, including the affected customer base, and will provide local services on a presubscription basis to Qwest's former customers.<sup>12</sup> Qwest and the Acquiring Carriers further note that some of the Qwest customers may have to change long distance carriers (intrastate or interstate) if they currently use a carrier not present on the Acquiring Carriers' switches. An Acquiring Carrier representative will contact those customers to coordinate a carrier change at no charge.<sup>13</sup>

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former Qwest customers might temporarily lose their presubscribed local service when Qwest ceases to provide such service in the affected exchanges. 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 local service to the transferred customers.

7. We find that Qwest and the Acquiring Carriers have demonstrated that a limited

---

<sup>7</sup> 47 C.F.R. § 1.3.

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

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

<sup>10</sup> *WAIT Radio*, 418 F.2d at 1157.

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

<sup>12</sup> Waiver Petition at 1-3.

<sup>13</sup> Waiver Petition at 4.

waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing local service, and because Qwest and the Acquiring Carriers have agreed to notify the affected customers as described below. Qwest and the Acquiring Carriers state that a two-step process to notify the affected customers of the transaction has already begun, with Qwest sending notification letters pursuant to its application requesting authority under section 214(a) of the Communications Act of 1934, 47 U.S.C. § 214(a), and section 63.71 of the Commission's rules, 47 C.F.R. § 63.71, to discontinue operations in the affected Utah exchanges.<sup>14</sup> These initial notification letters informed the affected customers that, after the transfer of service from Qwest to the Acquiring Carriers, they would receive the same local telephone service with no changes, that they would be free to select new local basic or local long distance service providers, and that they would be able to contact Qwest free of charge with any questions regarding the transfer.<sup>15</sup>

8. According to Qwest and the Acquiring Carriers, once the proposed sale has been consummated, the Acquiring Carriers will send these customers a "welcome letter" notifying them of that event and assuring them that no charges or rate increases for local service will be imposed as a result of the transaction. The welcome letters will also state that the Acquiring Companies will pay any charges associated with a single carrier change made by the customer during a period of two billing cycles after the welcome letter.<sup>16</sup> In the welcome letters, the Acquiring Carriers will advise the affected customers that the transfer of their local service may require them to change their intra-state and/or interstate long distance carrier if those carriers are not present on an Acquiring Carrier's switch. In the letter, the Acquiring Carriers will also promise that one of their representatives will call each customer in that situation to coordinate a switch to another long distance carrier at no charge.<sup>17</sup> In addition, the welcome letter will provide customers with a toll-free number to call with any questions they may have about the transition.<sup>18</sup> We conclude that these conditions will adequately protect the rights of Qwest's transferred customers.<sup>19</sup>

9. For the foregoing reasons, we grant Qwest and the Acquiring Carriers 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 Qwest's and the Acquiring Carriers' provision of customer notification, as described above and further detailed in the Waiver Petition and Supplement.

### III. ORDERING CLAUSES

---

<sup>14</sup> See Waiver Petition at 5-6; Waiver Petition, Attachment B.

<sup>15</sup> See Waiver Petition, Attachment B.

<sup>16</sup> See Waiver Petition at 3-4; Supplement.

<sup>17</sup> See *id.*

<sup>18</sup> See *id.*

<sup>19</sup> In addition, we note that the Acquiring Carriers' welcome letters state that the Acquiring Carriers will be responsible for all service issues. See Waiver Petition at 4; Supplement.

10. 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 joint waiver request filed by Qwest Corporation and All West Communications, Inc., All West World Connect, Carbon/Emery Telcom, Inc., Central Telcom Services, Central Utah Telephone, Inc., Emery Telcom, Hanksville Telcom, Inc., Manti Long Distance, Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc., and Uintah Basin Long Distance on November 9, 2000, and supplemented on December 21, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Katherine L. Schroder  
Chief, Accounting Policy Division  
Common Carrier Bureau