

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
International Exchange Communications, Inc.'s
Requests for Waiver
CC Docket No. 94-129

ORDER

Adopted: March 31, 2000

Released: March 31, 2000

By the Deputy Chief, 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 International Exchange Communications, Inc.'s (IECOM) a limited waiver of the authorization and verification requirements of the Commission's rules and Carrier Change Orders. This waiver will enable IECOM to become the preferred carrier of those consumers currently presubscribed to FiberTel, Inc. (FiberTel), Advantage

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); 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).

2 47 C.F.R. §§ 64.1100 - 64.1190.

3 On December 14, 1999, IECOM filed a Petition for Waiver of Commission Rules relating to its acquisition of customer bases of FiberTel, Inc., Advantage Telecommunications Corp., and North American Telephone Network, LLC (Waiver Petition). Since filing its Petition for Waiver, IECOM entered into a purchase agreement with NOSVA Limited Partnership. On January 19, 2000, IECOM filed a Supplemental and Amended Petition for Waiver of Commission Rules, to include the NOSVA customer base assets in the pending waiver request (Amended Waiver Petition). In this Order, we do not address IECOM's waiver request relating to its acquisition of North American Telephone Network, LLC. We intend to address this request in a future order.

Telecommunications Corp. (Advantage), and NOSVA Limited Partnership (NOSVA) without first obtaining the customers' 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," which is 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. IECOM seeks a waiver of our verification rules to allow it to be designated the preferred long distance carrier for customers of FiberTel, Advantage, and NOSVA without first obtaining each subscriber's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant IECOM a waiver subject to the conditions represented in its filing.

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 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

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 new 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 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) (*Wait Radio*).

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

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 IECOM 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 IECOM to transfer to its own customer base the affected FiberTel, Advantage, and NOSVA customers. In its waiver petition, IECOM states that it intends to purchase certain assets of FiberTel and Advantage, including but not limited to their customer accounts; accounts receivables; agreements, contracts, letters of agency, or other authorizations of the customers; customers' deposits; and certain other non-customer assets of FiberTel and Advantage.¹² In its amended petition, IECOM states that it intends to purchase certain assets of NOSVA, including but not limited to NOSVA's customer accounts; NOSVA's accounts receivables; agreements, contracts, letters of agency, or other authorizations of NOSVA's customers; deposits of NOSVA's customers; and certain other non-customer assets of NOSVA.¹³ 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, and therefore that special circumstances exist to justify a waiver.

6. Because IECOM has indicated its intent to notify customers of the proposed transactions as described below, we find that IECOM has demonstrated that a limited waiver of the Commission's carrier authorization and verification rules is in the public interest. IECOM states that it will undertake a two-step process to notify the affected customers of the transactions. In a first letter, IECOM will inform customers of the proposed transaction, and assure them that no charges or rate increases will be imposed as a result of the transaction.¹⁴ IECOM states that it will also advise the affected customers that they can choose a different preferred carrier should they desire.¹⁵ According to IECOM, once the proposed sales have been consummated, IECOM will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁶ IECOM has agreed that if the Commission waives its rules to permit IECOM to provide service to FiberTel, Advantage, and NOSVA's customers, IECOM will investigate, respond, and attempt to cure any complaints of former customers of FiberTel, Advantage, and NOSVA processed after the sale.¹⁷ We conclude that these conditions will adequately protect the rights of the transferred customers of FiberTel, Advantage, and NOSVA.

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¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *Id.* at 1159.

¹² Waiver Petition at 2.

¹³ Amended Waiver Petition at 2.

¹⁴ IECOM included a draft notification letter in its Waiver Petition marked as Exhibits D and F, and as Exhibit H in its Amended Waiver Petition.

¹⁵ Waiver Petition at 3; Amended Waiver Petition at 3.

¹⁶ IECOM filed a draft of the second notification letter. See Letter from Andrew L. Kramer, Esq., Smith, Jones & Fawer, L.L.P., dated March 17, 2000.

¹⁷ Waiver Petition at 3; Amended Waiver Petition at 3.

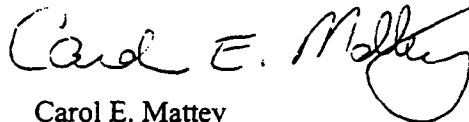
7. For the foregoing reasons, we grant IECOM a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon IECOM's provision of customer notification and handling of customer complaints, as described above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

III. ORDERING CLAUSES

8. 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 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, the waiver request filed by International Exchange Communications, Inc. on December 14, 1999, and amended on January 19, 2000, IS GRANTED for the transfer of assets associated with FiberTel, Advantage Telecommunications Corp., and NOSVA Limited Partnership, to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Common Carrier Bureau