

**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)	
)	
International Exchange Communications, Inc.)	
Petition for Waiver)	

ORDER

Adopted: May 2, 2000

Released: May 3, 2000

By the Deputy Chief, 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 International Exchange Communications, Inc. (IECOM) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ This waiver will enable

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), *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*).

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On December 14, 1999, IECOM filed a Petition for Waiver relating to its acquisition of customer bases of FiberTel, Inc., Advantage Telecommunications Corp., and North American Telephone Network, LLC (Waiver Petition). On January 19, 2000, IECOM filed a Supplemental and Amended Petition for Waiver, to include the customer base assets of NOSVA Limited Partnership in the pending waiver request. IECOM supplemented its Waiver Petition with a letter on March 17, 2000. On March 31, 2000, the Common Carrier Bureau released an Order granting waivers with respect to IECOM's transactions with three of the companies. In this Order, we

IECOM to become the preferred carrier of those consumers currently presubscribed to North American Telephone Network, LLC (NATN) 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, (Communications Act) 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. IECOM seeks a waiver of our verification rules to allow it to be designated the preferred long distance carrier for customers of NATN 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 IECOM a waiver subject to the conditions represented in its filing.

address IECOM's waiver request relating to the customer base of the fourth company, North American Telephone Network, LLC.

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.

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 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 NATN customers. In its waiver petition, IECOM states that it intends to purchase certain assets of NATN, including but not limited to its customer accounts; accounts receivables; agreements, contracts, letters of agency, or other authorizations of the customers; customers' deposits; and certain other non-customer assets of NATN.¹² 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 the waiver.

6. Because IECOM has indicated its intent to notify customers of the proposed transaction 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 transaction. 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.¹³ IECOM states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.¹⁴ In addition, the letter will provide a toll-free number for customers to call

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*).

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 2.

¹³ IECOM included a notification letter in its Waiver Petition marked as Exhibits D and F.

¹⁴ Waiver Petition at 3.

with any questions they may have about the transition. According to IECOM, once the proposed sale has been consummated, IECOM will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁵ IECOM has agreed that, if the Commission waives its rules to permit IECOM to provide service to NATN's customers, IECOM will investigate, respond, and attempt to cure any complaints of former customers of NATN processed after the sale.¹⁶ We conclude that these conditions will adequately protect the rights of the transferred customers of NATN.

7. We note that NATN, the carrier selling its customer base in this instance, has a history of delinquency in its contributions to the Universal Service Fund. Carriers pay into the Fund in order to provide financial support for various programs, including the High Cost, Schools and Libraries, and Rural Health Care programs. These programs were established by the Commission under section 254 of the Communications Act, and are administered by the Universal Service Administration Company, in order to ensure the delivery of affordable telecommunications service to all Americans.¹⁷ While we recognize the undue burden that delinquent carriers like NATN put on the Universal Service Fund, we believe that transferring NATN's customer base to IECOM, a responsible carrier contributing to the Fund as required under the Commission's rules, would be in the public interest.

8. 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 supplement thereto.

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

¹⁵ IECOM filed a second notification letter. See Letter from Andrew L. Kramer, Esq., Smith, Jones & Fawer, L.L.P., dated March 17, 2000.

¹⁶ Waiver Petition at 3.

¹⁷ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed, reversed, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*Universal Service Order*).

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, amended on January 19, 2000, and supplemented on March 17, 2000, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Common Carrier Bureau