

**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	)	
	)	
RSL COM U.S.A., Inc.	)	
	)	
Petition for Waiver	)	

**ORDER**

**Adopted: February 1, 2001**

**Released: February 2, 2001**

By the Associate 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 carriers changing a consumer's preferred carrier.<sup>2</sup> In this Order, we grant RSL COM U.S.A., Inc. (RSL) 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

<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), 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 15996 (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*.

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

<sup>3</sup> On December 7, 2000, RSL COM U.S.A., Inc. filed a Petition for Waiver relating to RSL's acquisition of the customer base of LDM Systems, Inc. (Waiver Petition).

RSL to become the preferred carrier of the consumers currently presubscribed to LDM Systems, Inc. (LDM), 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. RSL seeks a waiver of our verification rules to allow RSL to be designated the preferred long distance carrier for the affected customers of LDM 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 RSL 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.<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

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<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* 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).

<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. § 64.1120(c).

<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).

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 RSL 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 RSL to transfer to its own customer base the affected LDM long distance customers. According to the Waiver Petition, RSL currently serves as the underlying carrier for LDM customers but has made an internal business decision to consolidate the majority of its long distance telecommunications offerings into RSL.<sup>12</sup> As part of this consolidation, RSL intends to merge the telecommunications assets of LDM, its wholly-owned subsidiary, into RSL and to dissolve LDM as a separate entity.<sup>13</sup> Ultimately, RSL will provide LDM's customers with the same long distance telecommunications services previously provided by LDM.<sup>14</sup>

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former LDM customers might temporarily be interrupted when LDM 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 RSL 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 RSL has agreed to notify the affected customers as described below. According to the Waiver Petition, RSL will undertake a two-step process to notify the affected customers of the transfer. In a first letter, RSL informed these customers of its plans to begin billing them under the name "RSL COM U.S.A." and assured them that no charges or rate increases would be imposed as a result of the billing change.<sup>15</sup> In addition, RSL gave these customers a toll-free number to call with any questions they may have about the transition or their service.<sup>16</sup>

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<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 2, 4.

<sup>13</sup> Waiver Petition at 2.

<sup>14</sup> Waiver Petition at 4.

<sup>15</sup> Waiver Petition at 4-5 and n.6. Petitioner filed a sample "billing change" notice and a sample post-transfer notification letter. *See* Waiver Petition, Exhibits A and B.

<sup>16</sup> Waiver Petition at 4; Exhibit A.

8. According to RSL, once the proposed transfer has been consummated, RSL will notify these customers of that event and reiterate the foregoing information, assurances, and advice.<sup>17</sup> The post-transfer notice will also clearly inform the affected subscribers that they have a right to switch carriers at any time and that, if they decide to do so within 30 days, RSL will reimburse them for any carrier change charge that may be imposed.<sup>18</sup> In addition, in the Waiver Petition, RSL states that it will investigate and resolve any outstanding complaints that may have been filed against LDM.<sup>19</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of LDM.

9. For the foregoing reasons, we grant RSL 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 by RSL of customer notification and upon the handling of complaints, as described above and further detailed in the Waiver Petition.

### III. ORDERING CLAUSES

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 waiver request filed by RSL COM U.S.A., Inc. on December 7, 2000, IS GRANTED to the extent indicated herein.

11. 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

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<sup>17</sup> Waiver Petition at 5 and Exhibit B.

<sup>18</sup> Waiver Petition, Exhibit B.

<sup>19</sup> Waiver Petition at 6.