

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)	
)	
Indiana Bell Telephone Company d/b/a)	
Ameritech Indiana, Pacific Bell Telephone)	
Company, and Southwestern Bell Telephone)	
Company)	
)	
Petition for Waiver)	

ORDER

Adopted: February 15, 2001

Released: February 16, 2001

By the Associate Chief, Accounting Policy Division, 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 Indiana Bell Telephone Company d/b/a Ameritech Indiana (Indiana Bell), Pacific Bell Telephone Company (Pacific Bell),

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 (2000); *stay lifted*, *MCI World Com 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*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

and Southwestern Bell Telephone Company (Southwestern Bell) (collectively, Petitioners) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the extent necessary to enable Petitioners to become the preferred carriers of certain consumers currently presubscribed to Verizon Select Services, Inc. (Verizon) in certain California, Indiana, and Texas 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."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. Petitioners seek a waiver of our verification rules to allow Petitioners to be designated the preferred local exchange carriers for certain customers of Verizon 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 Petitioners a waiver, subject to the conditions represented in their filing.

³ On January 5, 2001, Indiana Bell Telephone Company d/b/a Ameritech Indiana, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company filed a Petition for Waiver of the Commission's carrier change rules relating to the transfer of Verizon's local subscribers in California, Indiana, and Texas to Petitioners' customer bases in those areas. (Waiver Petition.)

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*, 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).

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).

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 Petitioners 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 Petitioners to transfer to their own customer bases the affected Verizon customers. Petitioners state that they are local exchange carriers operating in Indiana, California, Arkansas, Kansas, Missouri, Oklahoma, and Texas. Verizon, a competitive local exchange carrier, provides local exchange services in, among other states, California, Indiana, and Texas.¹² Verizon has notified the California, Indiana, and Texas state commissions that, for business reasons, it has decided to withdraw from providing local exchange services within those service areas.¹³ Verizon also notified the affected customers of its decision and advised them that they would be transferred to Petitioners if they did not make alternative arrangements prior to the date on which Verizon discontinued service.¹⁴ Petitioners assert that Verizon has sought permission from the California, Indiana, and Texas state commissions to transfer its customers, prior to its discontinuance of service in their area, to the relevant Petitioner (*i.e.*, Indiana Bell, Pacific Bell, or Southwestern Bell.)¹⁵ Thus, according to the Waiver Petition, Petitioners would provide local

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).

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 Verizon notified its Indiana customers that it was discontinuing local exchange services on January 8, 2001; it notified its Texas customers that it was discontinuing local exchange service on February 6, 2001; it notified its California customers that it would discontinue local exchange service on March 19, 2001. Waiver Petition, Exhibits 1, 2, 3. It appears that the Verizon customers in Indiana and Texas who did not select an alternative carrier have already been transferred to the Petitioner serving their area.

¹⁵ Waiver Petition at 2-4. Petitioners also attach a letter from an official of the Indiana Utility Regulatory Commission that directs Verizon, upon its discontinuance of service, to transfer customers who have not made an alternative choice to the underlying carrier, including Indiana Bell, with no interruption of service. *Id.*; Exhibit 4.

exchange services on a presubscription basis to those Verizon customers who failed to make timely alternative arrangements.¹⁶

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, some former Verizon customers might temporarily lose their presubscribed local service when Verizon 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 the Petitioners have demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing local service, and because Petitioners have agreed to notify the affected customers as described below. According to the Waiver Petition, a two-step process to notify the affected customers of the transaction has already begun, with Verizon 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 California, Indiana, and Texas exchanges.¹⁷ These initial notification letters informed the affected customers that, after the transfer of service from Verizon to the Petitioners, they would receive the same local telephone service, that Verizon would credit the customer's account if the customer incurred any tariffed switching charges as a result of the transfer, that they would be free to select new local basic or local long distance service providers, and that they would be able to contact Verizon free of charge with any questions regarding the transfer.¹⁸

8. According to the Petitioners, once the transfer has been completed, the Petitioners will send these customers a post-transfer notification letter notifying them of that event and advising them of their rights and options. In addition, the post-transfer letter will provide customers with a toll-free number to call with any questions they may have about the transition.¹⁹ We conclude that these conditions will adequately protect the rights of Verizon's transferred customers.

9. For the foregoing reasons, we grant Petitioners 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, as described above and further detailed in the Waiver Petition.

¹⁶ Waiver Petition at 3.

¹⁷ See Waiver Petition, Exhibits 1, 2, 3.

¹⁸ See *id.*

¹⁹ See Waiver Petition, Exhibit 5.

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 Indiana Bell Telephone Company d/b/a Ameritech Indiana, Pacific Bell Telephone Company, and Southwestern Bell Telephone Company on January 5, 2001 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