

**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	)	
	)	
PowerNet Global Communications	)	
	)	
Petition for Waiver	)	
	)	

**ORDER**

**Adopted: March 29, 2001**

**Released: March 30, 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 PowerNet Global Communications (PNG) 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

<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); *amended*, Order, FCC 01-67 (rel. February 22, 2001); *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 March 2, 2001, PNG filed a Petition for Waiver relating to PNG's acquisition of the customer bases of U.S. TeleStar Communications Group, Inc. and LDC Consultants, Inc. (Waiver Petition). Because PNG's (continued....)

necessary to enable PNG to become the preferred carrier of the consumers currently presubscribed to U.S. TeleStar Communications Group, Inc. (UST) and LDC Consultants, Inc. (LDC), 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. PNG seeks a waiver of our verification rules to allow PNG to be designated the preferred long distance carrier for the affected customers of UST and LDC 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 PNG 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

---

counsel inadvertently failed to sign the March 2 Waiver Petition, as required by section 1.52 of our rules, 47 C.F.R. § 1.52, PNG refiled the petition with counsel's signature on March 28, 2001.

<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).

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 PNG 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 PNG to transfer to its own customer base the affected UST and LDC long distance customers. According to the Waiver Petition, UST and LDC are currently wholesale customers of PNG, and UST and LDC provide interstate and intrastate long distance services to subscribers through PNG's network. PNG states that it has entered into agreements with both UST and LDC to purchase the assets, including the customer bases, of each entity.<sup>12</sup> PNG maintains that the transfer of the UST and LDC customer bases to PNG will allow the affected customers to receive service over the same network without a change in the quality of service.<sup>13</sup>

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former UST and LDC customers might temporarily be interrupted when UST and LDC cease 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 PNG 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 PNG has agreed to notify the affected customers as described below. According to the Waiver Petition, PNG will undertake a two-step process to notify the affected customers of the transfer. In a first letter, PNG will inform these customers of its plans to transfer them to PNG from their current service provider and assure them that no charges or rate increases will be imposed as a result of the billing change.<sup>14</sup> The notification letter will also advise the affected customers that they are free to choose a different preferred carrier, should they desire to do so.<sup>15</sup> In addition, PNG will give these customers a toll-

---

<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 2.

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

<sup>14</sup> Waiver Petition at 2-3. Petitioner filed sample pre- and post-transfer notification letters. See Waiver Petition, Exhibits A and B.

<sup>15</sup> Waiver Petition, Exhibit A.

free number to call with any questions they may have about the transfer.<sup>16</sup>

8. Once the proposed transfer has been consummated, PNG will notify affected customers of that event and reiterate the foregoing information, assurances, and advice.<sup>17</sup> In addition, according to its Waiver Petition, PNG will investigate and resolve any outstanding complaints that may have been filed against UST and LDC.<sup>18</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of UST and LDC.

9. For the foregoing reasons, we grant PNG 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 PNG's provision of customer notification and 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 PowerNet Global Communications on March 28, 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

---

<sup>16</sup> Waiver Petition at 3; Exhibit A.

<sup>17</sup> Waiver Petition at 3; Exhibit B.

<sup>18</sup> Waiver Petition at 3.