

**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)	
)	
Talk.com Inc., Talk.com Holding Corp.,)	
Access One Communications Corp., The)	
Other Phone Company, Inc. d/b/a Access One,)	
and OmniCall, Inc.)	
)	
Petition for Expedited 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*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant Talk.com Inc., Talk.com Holding Corp. (Talk.com Holding), Access One Communications Corp., The Other

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); *amended*, Order, FCC 01-67 (released 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*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

Phone Company, Inc. d/b/a Access One, and OmniCall, Inc. (combined Access One) (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 Talk.com Holding to become the preferred carrier of consumers currently presubscribed to Access One in certain Georgia 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 Talk.com Holding to be designated the preferred local exchange and interexchange carrier for certain customers of Access One 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 filings.

³ On March 13, 2001, Talk.com Inc., Talk.com Holding Corp., Access One Communications Corp., The Other Phone Company, Inc. d/b/a Access One and OmniCall, Inc. filed a Petition for Expedited Waiver of the Commission's carrier change rules relating to the transfer of Access One's customer base to Talk.com Holding. (Waiver Petition.) On March 28, 2001, Petitioners supplemented their Waiver Petition with a sample post-transfer notification letter. (Supplement).

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 Talk.com Holding to transfer to its own customer base the affected Access One customers. Petitioners state that the customers at issue are located in Georgia, where Talk.com Inc., Talk.com Holding, and Access One currently hold telecommunications authorizations to provide resold and/or facilities-based long distance and local exchange services.¹² Petitioners are in the process of consolidating their corporate structure so that Talk.com Holding will be the only entity serving Talk.com customers. Talk.com Holding, a wholly-owned subsidiary of Talk.com Inc., is currently seeking authority to provide facilities-based local exchange services throughout Georgia through the use of UNE-Platform arrangements.¹³ According to the Waiver Petition, Talk.com Holding will soon receive facilities-based authority in Georgia, and all existing customers of Access One will be transferred to Talk.com Holding pursuant to a Consent Agreement issued by the Georgia Commission.¹⁴ Petitioners now request this Commission to facilitate the reassignment of customers from Access One to Talk.com Holding and to permit Talk.com Holding to assume the billing, customer care,

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 2. According to the Waiver Petition, Talk.com Inc. has three utility subsidiaries holding state telecommunications authorizations: Talk.com Holding Corp., The Other Phone Company, Inc. d/b/a Access One and OmniCall, Inc. Talk.com Holding Corp. is a wholly-owned subsidiary of Talk.com Inc.; the Other Phone Company and OmniCall, Inc. are wholly-owned subsidiaries of Access One Communications Corp.; and Access One Communications Corp. is a wholly-owned subsidiary of Talk.com Inc. *Id.* at n.1.

¹³ Waiver Petition at 2.

¹⁴ Waiver Petition at 2.

and other functions associated with providing local exchange and interexchange services.¹⁵

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former Access One customers might temporarily be interrupted when Access One ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorizations; 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 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 service, and because Petitioners have agreed to notify the affected customers as described below. According to the Waiver Petition and Supplement, Access One and Talk.com Holding will undertake a two-step process to notify the affected customers of the transfer.¹⁶ The first notification letter, the contents of which have been negotiated between the Petitioners and the Georgia Commission, will inform each customer of the proposed transfer to Talk.com Holding and assure them that they will receive the same features, services, and rates that Access One currently provides.¹⁷ This notification letter will also advise the affected customers of their right to select a different preferred carrier, should they desire to do so. Petitioners state that, if a customer does select another carrier within 60 days of the date of the notification letter, Talk.com Holding will pay any switching fees.¹⁸ In addition, the affected customers will be given a toll-free number to call with any questions they may have about the transfer.¹⁹

8. According to the Petitioners, once the proposed transfer has been completed, Petitioners will notify these customers of that event and reiterate the foregoing information, assurances, and advice.²⁰ In addition, the Petitioners state that they will work together to investigate and resolve any outstanding customer complaints regarding services provided by Access One.²¹ We conclude that these conditions will adequately protect the rights of Access One's transferred customers.

9. We note that The Other Phone Company d/b/a Access One, the carrier selling its

¹⁵ Waiver Petition at 3.

¹⁶ Petitioners filed sample notification letters. *See* Waiver Petition, Attachment A; Supplement, Attachment B (Notification Letters).

¹⁷ Waiver Petition at 4.

¹⁸ Waiver Petition at 4; Notification Letters.

¹⁹ *See* Notification Letters.

²⁰ Supplement at 2; Attachment B.

²¹ Waiver Petition at 4.

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 Communication Act of 1934, as amended, and are administered by the Universal Service Administration Company, in order to ensure the delivery of affordable telecommunications service to all Americans.²² While we recognize the undue burden that delinquent carriers like The Other Phone Company d/b/a Access One put on the Universal Service Fund, we believe that transferring its customer base to Talk.com Holding, a responsible carrier contributing to the Fund as required under the Commission's rules, would be in the public interest.

10. 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 by Petitioners of customer notification and upon the handling of complaints, as described above and further detailed in the Waiver Petition and Supplement.

III. ORDERING CLAUSES

11. 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 Talk.com Inc., Talk.com Holding Corp., Access One Communications Corp., The Other Phone Company, Inc. d/b/a Access One, and OmniCall, Inc. on March 13, 2001 and supplemented on March 28, 2001, IS GRANTED to the extent indicated herein.

12. 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

²² 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*).