

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Application of Nevadacom for)	
Review of Order)	CC Docket No. 00-21
Denying Nevadacom's Petition for)	
Expedited Declaratory Ruling)	

ORDER ON REVIEW

Adopted: June 27, 2002

Released: July 2, 2002

By the Commission:

1. In this Order, we deny the application of Nevadacom, Inc. (Nevadacom)¹ for review of a Common Carrier Bureau (Bureau) Order addressing telegraphic money order services. On April 26, 2000, the Bureau declined to issue a declaratory ruling sought by Nevadacom that telegraphic money order service is an enhanced service or an information service under the Commission's precedent and the Communications Act of 1934, as amended, and declined to preempt any state requirement regulating the provision of such service.² We affirm the Bureau's denial of Nevadacom's petition for the reasons discussed below.

2. As an initial matter, Nevadacom argues in its application that the Commission must act to remove uncertainty associated with attempts by the states to regulate Nevadacom's services "by affirming the status of telegraphic money order service as an enhanced or information service under federal communications law."³ While Nevadacom pointed out in its initial petition that the Bureau has already referred to money order service as an enhanced service pursuant to the definition contained in the *Computer II Order*,⁴ it has otherwise offered

¹ *Application of Nevadacom for Review of Order Adopted Pursuant to Delegated Authority Denying Nevadacom's Petition for Expedited Declaratory Ruling*, filed May 26, 2000 (Application).

² *Petition of Nevadacom for Expedited Declaratory Ruling That Telegraphic Money Order Service Is An Information (Enhanced) Service And Not Subject to State Regulation*, CC Docket No. 00-21, Order, 15 FCC Rcd 7567, 7568, para. 2 (Com. Car. Bur. 2000) (*Nevadacom Bureau Order*). The Bureau (now named the Wireline Competition Bureau) denied the petition for declaratory ruling without prejudice and also terminated the proceeding. *Id.* at 7567. The Bureau subsequently issued a public notice requesting comments on Nevadacom's application in CC Docket No. 00-21, thereby maintaining it as an open docket. No comments were filed in response to the public notice. *Pleading Cycle Established for Comments for Application of Nevadacom for Review*, CC Docket No. 00-21, Public Notice, DA 00-2626 (rel. Nov. 21, 2000). We accordingly issue this order in the same docket.

³ Application at 7.

⁴ Nevadacom Petition at 5-6 (citing *Western Union Telegraph Company Revisions to Tariff F.C.C. Nos. 229 and 263, Transmittal No. 7485*, Memorandum Opinion and Order, para. 6 (Com. Car. Bur. 1980) (*Western Union* (continued...))

no new information that the Commission could use to further classify this service.⁵ We therefore take no further action on this issue.⁶

3. Nevadacom also claims that the Bureau should have affirmed on the record before it that states may not impose any requirement that bars or inhibits the provision of money transfer service, and should have found that to the extent a state enacts such a requirement, it is preempted.⁷ We disagree. Nevadacom admits that it did not allege that any state had adopted the draft uniform act addressing money services businesses by the National Conference of Commissioners on Uniform State Laws.⁸ Nevadacom also did not present any evidence that any state adopted a final version of the uniform act. The Commission has clearly stated that it will review state requirements that could thwart or impede the nonstructural safeguards it has established for the provision of information services on a “case-by-case basis.”⁹ It has also found that preemption is justified only where a sufficient record exists to show that a specific state requirement could thwart federal objectives, and that a decision to preempt would not be based on “hypothetical factors.”¹⁰ The Bureau did not have sufficient evidence of any specific state requirement that impeded the provision of telegraphic money order service, and reasonably concluded that it could not issue a preemption ruling based on a draft version of a model law that may or may not be adopted in its original form by any state.¹¹ Accordingly, we affirm the Bureau’s actions, especially in light of its finding that if any state or states subsequently adopt a

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Order); *Amendment of Part 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, Final Decision, 77 F.C.C.2d 384 (1980) (*Computer II Order*).

⁵ For example, the Commission determined that Internet access services are information services by analyzing the features and functions of the services and how they are used by certain entities. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report to Congress, 13 FCC Rcd 11501,11529-40, paras. 56-82 (rel. Apr. 10, 1998). It has also asked extensive questions regarding whether wireline broadband Internet access service should be classified as an information service. *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, 17 FCC Rcd 3019, 3029-35, paras. 17-29 (2002). Nevadacom explained the Commission’s historical treatment of money order services and, in a footnote, described how customers can reach Nevadacom in order to send a telegram, but did not provide other details about its service offerings. Nevadacom Petition at 3-5 and n.2.

⁶ We also do not take any action that would change the Bureau’s findings in the *Western Union Order*.

⁷ Application at 7-12.

⁸ *Id.* at 9.

⁹ *Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier I Local Exchange Company Safeguards*, CC Docket No. 90-263, Report and Order, 6 FCC Rcd 7571, 7631, para. 121 (1991).

¹⁰ *Id.* at 7631, para. 121.

¹¹ We also note that it is well-established that the Commission, and in this case, the Bureau, has wide discretion in determining whether to grant a petition for declaratory ruling. *Yale Broadcasting Company et al. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973). *See also* 47 U.S.C. § 5(c)(5).

regulation that Nevadacom believes erects a barrier to entry for the provision of its services, it is free to file a petition to preempt that state law or regulation at that time.¹²

4. Accordingly, IT IS ORDERED that the application for review filed by Nevadacom, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² *Nevadacom Bureau Order*, 15 FCC Rcd at 7568, para. 2.