

**Before the  
Federal Communications Commission  
Washington, DC 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, Inc.	)	
America One Communications, Inc.	)	
Petition for Waiver	)	

**ORDER**

Adopted: **May 24, 2000**

Released: **May 25, 2000**

By the Deputy Chief, 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, Inc. (PNG) and America One Communications, Inc. (America One) 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 PNG to become the preferred carrier of consumers currently presubscribed to America One without first obtaining the consumers' authorization or verification.

<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*, FCC 00-135 (released May 3, 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 March 17, 2000, PNG and America One filed a Petition for Waiver (Waiver Petition). On May 3, 2000, PNG and America One filed a Joint Supplement to their Waiver Petition, which included two exhibits.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, (Communications Act) 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 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 and America One seek a waiver of the verification rules to allow PNG to be designated the preferred long distance carrier for customers of America 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 grant the waiver, we grant PNG and America One a waiver, subject to the conditions represented in their 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 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.

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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, carriers 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. § 64.1150.

<sup>7</sup> 47 C.F.R. § 1.3.

<sup>8</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (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).

<sup>10</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

5. We find that PNG and America One 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 PNG to transfer to its own customer base the affected customers of America One. America One and PNG are both authorized to provide intrastate and interstate resold long distance services, but America One has decided to exit this business. On February 16, 2000, America One and PNG entered into an agreement whereby America One would transfer approximately 20,000 customers to PNG.<sup>11</sup> During the week of March 13, 2000, America One and PNG sent a joint letter to notify America One's customers of that carrier's plans to transfer its customer base to PNG and cease providing interexchange services.<sup>12</sup> The letter informed affected customers that they were free to choose another carrier, and that, if they did not select another carrier, an arrangement had been made for PNG to become their interexchange carrier. The letter explained that this arrangement would ensure that the customers received uninterrupted long distance service despite the transfer, that PNG would offer them rates that would be the same as, or better than, their rates from America One, and that customers would not have to pay any switching fees associated with the transfer. The letter also provided America One's toll-free customer service number for customers to call with questions about the proposed change.<sup>13</sup>

6. We note that, when considering past requests for waiver of the Commission's carrier change authorization and verification rules, we have viewed favorably those situations in which a carrier certifies that it will undertake a two-step customer notification process, with customer notification taking place both before and after the transfer occurs. Ideally, the first step in such notification should occur after the Commission has had an opportunity to make a determination regarding the carrier's request for waiver to ensure that the notification is sufficient to justify a waiver of the Commission's subscriber authorization and verification rules. In this instance, America One and PNG jointly notified the customers of their transfer to PNG prior to filing a waiver request. We strongly discourage this practice and expect that carriers seeking a waiver of the Commission's subscriber authorization and verification rules will permit the Commission to consider the merits of the waiver request prior to customer notification regarding the transfer of the customer base.

7. Nevertheless, we conclude that special circumstances exist to justify the requested waiver. PNG and America One argue that the purpose of the Commission's verification rules would not be served by requiring them to obtain prior authorization and verification from each customer in order to switch the entire customer base of America One to PNG. PNG and America One state that, given the size of the customer base involved, they might not be able to obtain such authorization and verification from each subscriber prior to the transfer, and that, if the transfer occurred without a waiver, some customers might temporarily lose service or be charged substantially higher rates than those PNG will charge.<sup>14</sup> We conclude that a waiver of the

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<sup>11</sup> Waiver Petition at 2.

<sup>12</sup> *Id.* at 2-3; *see also* Supplement at 2 n.2 and Exhibit A.

<sup>13</sup> Supplement Exhibit A.

<sup>14</sup> Waiver Petition at 3-5.

Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

8. We find that PNG and America One 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 or paying significantly higher rates. Absent a waiver of the Commission's rules, the affected customers would be unable to place "1+" interexchange calls after the transfer. As a result, such customers might be forced to use dial-around services, which may be more expensive than the services they now receive from America One and that PNG has promised to provide after the transfer.

9. Our conclusion that a waiver is in the public interest also is based on the fact that America One's customers have already received some notification of the transaction, as described above, and that PNG has agreed to provide additional notice to the former America One customers after the transaction is completed.<sup>15</sup> According to PNG, once the transfer has been accomplished, it will notify customers of that event and assure them that no charges or fees will be imposed as a result of the transfer, that their rates will not increase, and that they are free to select a different carrier. PNG will also provide customers with a toll-free number to call with any questions they may have about the transition.<sup>16</sup> Finally, PNG and America One have promised to work together to investigate and resolve any outstanding customer complaints that may have been made against America One.<sup>17</sup> We conclude that these conditions will adequately protect the rights of the transferred customers of America One.

10. For the foregoing reasons, we grant PNG and America One a waiver of the authorization and verification requirements of the Commission's rules for the limited purposes described above. The grant of this waiver is conditioned upon the provision by PNG and America One of customer notification and handling of customer complaints, as described above and further detailed in their Waiver Petition and Supplement.

### III. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, 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, Inc. and America One Communications, Inc. on March 17, 2000, and supplemented on May 3, 2000, IS GRANTED to the extent indicated herein.

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<sup>15</sup> See Supplement at 2 and Exhibit B.

<sup>16</sup> *Id.*; see also Waiver Petition at 3-4.

<sup>17</sup> See Waiver Petition at 3.

12. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey  
Deputy Chief, Common Carrier Bureau