

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

In the Matter of )
)
2000 Biennial Review-Review of Policies and )
Rules Concerning Unauthorized Changes of ) CC Docket No. 00-257
Consumers' Long Distance Carriers )
)
Implementation of the Subscriber Carrier )
Selection Changes Provisions of the ) CC Docket No. 94-129
Telecommunications Act of 1996 )
)
Sprint-Florida, Inc. )
United Telephone-Southeast, Inc. )
)
Emergency Petition for Waiver )

ORDER

Adopted: September 19, 2002

Released: September 20, 2002

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its Streamlining Order, the Commission instituted streamlined procedures for compliance with the authorization and verification requirements of our rules and of section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, in situations involving the carrier-to-carrier sale or transfer of subscriber bases.1 In this Order, we find it is in the public interest to grant Sprint-Florida, Incorporated (Sprint-Florida) and United Telephone-Southeast, Incorporated (Sprint-Tennessee) a limited waiver of these rules. We grant this waiver to the extent necessary to enable Sprint-Florida and Sprint-Tennessee, without complying precisely with the Commission's streamlined procedures, to become the presubscribed provider of local service to customers of certain competitive local exchange carriers (CLECs) currently in bankruptcy proceedings.

2. In 1998, the Commission adopted rules to implement section 258 of the 1996 Act, which expanded the Commission's existing authority to deter and punish "slamming," the submission or

1 See 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, ("Streamlining Order"), 16 FCC Rcd 11218 (2001), adopting 47 C.F.R. § 64.1120(e). See also 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

execution of an unauthorized change in a subscriber's selection of a provider of telecommunications service.<sup>2</sup> Pursuant to section 258 and the Commission's rules, carriers are barred from changing a customer's preferred carrier without first complying with the Commission's procedures.<sup>3</sup>

3. According to the streamlined procedures adopted by the Commission, carriers need not obtain individual subscriber authorization and verification for carrier changes associated with the carrier-to-carrier sale or transfer of a subscriber base, provided that, not later than 30 days before the planned carrier change, the acquiring carrier notifies the Commission, in writing, of its intention to acquire the subscriber base and certifies that it will comply with the required procedures, including the provision of 30-day advance written notice to all affected subscribers.<sup>4</sup> These rules are designed to ensure that affected subscribers have adequate information about the carrier change in advance, that they are not financially harmed by the change, and that they will experience a seamless transition of service from their original carrier to the acquiring carrier.<sup>5</sup> This self-certification process also provides the Commission with information it needs to fulfill its consumer protection obligations.<sup>6</sup>

4. Sprint-Florida and Sprint-Tennessee filed with the Commission an expedited Petition for Waiver (Petition) asking the Commission to waive the 30-day advance notice requirements of sections 64.1120(e)(1) and (e)(3) of our rules to permit the transfer of certain remaining local exchange customers from Adelphia Business Solutions, Inc. (Adelphia) to Sprint-Florida and Sprint-Tennessee.<sup>7</sup>

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<sup>2</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, 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 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), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. *See, e.g., 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); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>3</sup> *Id.*

<sup>4</sup> 47 C.F.R. § 64.1120(e).

<sup>5</sup> *See Streamlining Order* ¶ 10, 16 FCC Rcd at 11222.

<sup>6</sup> *Id.*

<sup>7</sup> Emergency Petition for Waiver – Expedited Action Requested, filed with the Commission by Sprint-Florida on September 6, 2002, amended and re-filed by Sprint-Florida and Sprint-Tennessee on September 11, 2002, and amended and re-filed on September 13, 2002 (seeking waiver of 30-day notice requirements of 47 C.F.R. §§ 64.1120(e)(1) & (e)(3)).

## II. DISCUSSION

5. Generally, the Commission's rules may be waived for good cause shown.<sup>8</sup> As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.<sup>9</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>10</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>11</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>12</sup> In addition, the Commission specified in the *Streamlining Order* that instances in which it is impossible to comply precisely with the streamlined procedures will be resolved on a case-by-case basis.<sup>13</sup>

6. We find that Sprint-Florida and Sprint-Tennessee have demonstrated that good cause exists to justify a limited waiver of the Commission's requirements to the extent necessary to enable them to transfer to their own customer bases the affected Adelphia customers. Petitioners note that Adelphia has filed for bankruptcy protection in federal court.<sup>14</sup> In addition, Petitioners state that on September 3, 2002, the Florida Public Service Commission (Florida PSC) issued a decision requiring Adelphia to provide Sprint-Florida with the necessary customer contact information by September 10, 2002, such that Sprint-Florida can notify affected customers that they will be transferred to Sprint-Florida's local service as of September 23, 2002, if they do not select another carrier before that date.<sup>15</sup> According to the Petition, Adelphia has indicated that it will also exit the Tennessee local resale market on September 23, 2002, and the Tennessee Regulatory Authority (Tennessee Authority) on September 13, 2002, granted Sprint-Tennessee an exemption to certain of its rules to permit Sprint-Tennessee to become the local exchange carrier for Adelphia customers that have not chosen another local exchange carrier by September 23, 2002.<sup>16</sup>

7. Under the Commission's rules, no later than 30 days prior to the transfer, an acquiring carrier must self-certify its compliance with the required procedures to the Commission and must give the affected subscribers notice of, and certain information about, the transfer.<sup>17</sup> Given the special circumstances Petitioners have described, compliance with the 30-day advance notice requirement could potentially result in the loss of local service for affected Adelphia customers during the 30-day period. Moreover, the Florida PSC and the Tennessee Authority have provided for Sprint-Florida and Sprint-

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<sup>8</sup> 47 C.F.R. § 1.3.

<sup>9</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>10</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>11</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>12</sup> *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

<sup>13</sup> *Streamlining Order* ¶ 20, 16 FCC Rcd at 11226.

<sup>14</sup> Petition at 4.

<sup>15</sup> Petition at 3.

<sup>16</sup> On September 11, 2002, Sprint-Tennessee filed a petition (State Petition) with the Tennessee Authority seeking approval to become the LEC for those Adelphia customers that have not chosen another LEC by September 23, 2002.

<sup>17</sup> 47 C.F.R. §§ 64.1120(e)(1) & (e)(3).

Tennessee, respectively, to transition remaining Adelphia customers on September 23, 2002, the date Adelphia has indicated that it will leave the Florida and Tennessee local exchange markets. Sprint-Florida and Sprint-Tennessee also indicate that the transferred customers will receive the same services as they received from Adelphia, at rates contained in Sprint's General Exchange Tariff and approved by the relevant Florida and Tennessee authorities.<sup>18</sup> As noted above, the streamlined procedures were designed to permit affected subscribers to experience a "seamless transition of service from the original carrier to the acquiring carrier."<sup>19</sup> We find that, in the special circumstances of this case, waiver of the 30-day notice requirement would better serve this goal and would therefore serve the public interest.

8. Sprint-Florida indicates that, within 48 hours of the release date of this *Order*, it will send each affected customer a letter containing general information regarding the rates, terms, and conditions of service, and all other information required by section 64.1120(e), including a toll-free number the customer may use to call for answers to questions regarding the transfer, or to switch to a different calling plan or long distance carrier.<sup>20</sup> Sprint-Tennessee states that it will provide this notification within 48 to 72 hours of the release date of this *Order*.<sup>21</sup> Sprint-Florida and Sprint Tennessee indicate that they will also send an additional letter to each transferred customer after September 23, 2002, welcoming the customer to Sprint, informing the customer that a Sprint representative will contact the customer in the near future to review the customer's current services and that, in the event the customer is not contacted before the customer receives the first bill from Sprint, the bill itself will provide details of rates, terms and conditions of the Sprint services the customer is receiving.<sup>22</sup> This letter will again state that the customer will not be billed for change fees associated with the transfer to Sprint and that the customer has the right to change carriers.<sup>23</sup> In the special circumstances presented in this case, we find it unlikely that the affected subscribers will suffer harm from receiving less than 30 days notice of the transfer and, in any event, we conclude that any such harms would be outweighed by the benefits of a seamless transfer of service.<sup>24</sup>

9. For the foregoing reasons, we grant Sprint-Florida and Sprint-Tennessee a waiver of the 30-day advance notification requirements of 47 C.F.R. §§ 64.1120(e)(1) and (e)(3) for the limited purposes described above. The grant of this waiver is conditioned upon Sprint-Florida's and Sprint-Tennessee's provision of customer notification and certification to the Commission that complies with all requirements of section 64.1120(e) except the 30-day periods waived herein.

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<sup>18</sup> Petition at 4.

<sup>19</sup> *Streamlining Order* at ¶ 10, 16 FCC Rcd at 11222.

<sup>20</sup> Petition at 4.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 4. In its Petition, Sprint indicates that, once all the customers have been contacted, Sprint will make an additional certification to the Commission.

<sup>23</sup> *Id.*

<sup>24</sup> We note that Sprint indicates that, as of September 11, all but four of Adelphia's remaining customers in the Sprint-Florida and Sprint-Tennessee territories are business customers.

**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 0.141, 0.361, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.3, the waiver request filed by Sprint-Florida, Incorporated and United Telephone-Southeast, Incorporated on September 13, 2002, IS GRANTED to the extent indicated herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler, Deputy Chief  
Consumer & Governmental Affairs Bureau