

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Rules and Policies Regarding) CC Docket No. 91-281
Calling Number Identification)
Service -- Caller ID)

MEMORANDUM OPINION and ORDER

Adopted: December 20, 1996 Released: December 23, 1996

By the Chief, Network Services Division:

I. INTRODUCTION and BACKGROUND

1. The Commission has received several requests for waiver of the *82 unblocking requirement for calls that originate on Siemens Stromberg Carlson ("SSC") Digital Community Office ("DCO") switches.¹ For the reasons discussed below, we grant waivers for Pond Branch, Twin Lakes, Sioux Valley and Hills, Craw-Kan, and Northland. We deny Middleburgh's waiver request.

2. Section 64.1601(b) prohibits carriers from revealing a caller's name or telephone number when the caller requests that information not be provided to the called party.² Section 64.1601(b) of the Commission's rules provides that carriers employing Signaling System Seven

¹ Sioux Valley Telephone Company and Hills Telephone Company ("Sioux Valley and Hills") filed a joint petition for waiver on October 22, 1996. Twin Lakes Telephone Cooperative Corporation ("Twin Lakes") filed a request for waiver on November 19, 1996. Pond Branch Telephone Company, Inc. ("Pond Branch") filed a request for waiver on December 6, 1996. The Middleburgh Telephone Company ("Middleburgh") filed for waiver on December 9, 1996. Craw-Kan Telephone Cooperative, Inc. ("Craw-Kan") and Northland Telephone Company of Vermont ("Northland") filed for waivers on December 17, 1996.

² 47 C.F.R. § 64.1601(b).

("SS7") must recognize *67 as a request for privacy on an interstate call.³ Additionally, Section 64.1601(b) requires that if a carrier offers per line blocking, it also must recognize *82 as a caller's request that the calling party's number be provided on an interstate call.⁴

3. In the November 30, 1995 Order the Bureau stayed the application of the *82 requirement for all carriers, for calls originating on lines served by DCO switches, until January 1, 1997.⁵ This requirement was stayed in response to carriers that requested waivers on the grounds that the generic switch software with *82 capability ("*82 software") would not be available until June 1996.⁶ The Bureau also stayed the requirement that carriers provide customer notification regarding the *82 unblocking capability.⁷ Finally, the Bureau stayed the ban against using *67 as an alternative unblocking code.⁸

II. THE PETITIONS

4. Sioux Valley and Hills request a waiver of the *82 requirement for three years.⁹ The carriers state that they would have to invest \$53,000 to upgrade their switches to provide subscribers with *82 capabilities.¹⁰ They argue that their subscribers can use *67 as an unblocking device and that the switch software necessary to permit customers to use *82 does not contain any other features that are of interest to Sioux Valley and Hills. They add that only 74 of their 7,500 subscribers have per line blocking and would therefore use the *82 per call unblocking function, and that these 74 subscribers make very little use of the *82 function. Finally, the carriers argue that they should not be required to invest in the *82 software for the same reasons that carriers are not required to purchase SS7 technology to comply with the Caller

³ *Id.*

⁴ *Id.*

⁵ See In the Matter of Rules and Policies Regarding Calling Number Identification Service - Caller ID, 11 FCC Rcd 1743, 1749 (1995) ("November 30, 1995 Order").

⁶ *Id.* at 1745-49.

⁷ *Id.* at 1749.

⁸ *Id.*

⁹ Sioux Valley and Hills originally requested a waiver of the *82 request for an indefinite amount of time. The carriers later submitted a supplement to their petition limiting their request to three years.

¹⁰ The carriers state that the switch software vendor increased its estimate from \$30,000 to \$53,000. See Sioux Valley and Hills petition at 2.

ID rules.

5. Twin Lakes requests a waiver of the *82 requirement until February 28, 1997 in order for the vendor to complete the *82 software installation on its DCO switches. The carrier states that although it asked SSC to provide a proposal for upgrading its switches in June 1996, when the *82 software first became available, SSC did not provide a proposal for upgrading Twin Lakes' DCO switches until August 1996. The carrier argues that it cannot meet the January 1, 1997 deadline because of the delay caused by SSC. Twin Lakes states that *82 software installation is scheduled to begin on January 7, 1997, for one DCO switch. It adds that installation on the remaining five DCO switches will begin on January 21, 1997.

6. Pond Branch states that it needs a waiver of the *82 requirement until December 31, 1997 in order to replace its DCO switches. It notes that it plans to transfer all of its customer lines to a new network starting January 1997. Pond Branch states that it would cost \$67,000 to upgrade its current switches to enable customers to have per call unblocking capabilities. The carrier notes that only 240 of its 14,000 customers have subscribed to per line blocking and would therefore need per call unblocking. Finally, the carrier states that it would not be "economically practical" for it to invest in such an upgrade prior to installing the new network.

7. Middleburgh requests a waiver of the *82 requirement until December 31, 1998. Middleburgh states that it cannot comply with the January 1, 1997 deadline due to "limitations in the current software used in [Middleburgh's] DCO switch ... ". The carrier states that it "is in the process of reevaluating its current network in order to provide the best service to its customers and also comply with the federal and state rules." The carrier "estimates that a decision with regard to a network upgrade will be made by year end, 1997 ... ". Finally, Middleburgh states that it does not believe that it is "economically practical ... for the company to incur an estimated cost of \$40,000 to comply with the Commission's Caller ID rules, when [Middleburgh] is possibly subject to further upgrades for other reasons in a short time frame."

8. Northland and Craw-Kan request waivers of the *82 requirement because they plan to upgrade their DCO switches to SSC generic operating software Release 21, when it is released in late 1997. Northland states that Release 21 will support ISDN and *82, and that the latest SSC switch software, Release 20, does not have any other features that "are of interest to [it]." Northland further states that it will save the "added labor expense that would have resulted from doing two upgrades instead of one." Craw-Kan adds that it will cost \$96,000 to upgrade its three host switches to support the use of *82. Craw-Kan states that only 43 of its 15,700 subscribers have requested per line blocking. It also argues that "it would be unreasonable to require [it] to purchase this upgrade."

III. DISCUSSION

9. The Commission may waive any provision of its rules, in whole or in part, if good cause is shown. 47 C.F.R. §1.3.¹¹ We find that Twin Lakes and Pond Branch have shown good cause for a waiver in this case. We agree that it would be inefficient for Pond Branch to conduct extensive software upgrades on switches that it plans to replace in 1997. This decision is consistent with the Bureau's October 4, 1996 Order where it granted a waiver to Pacific Bell on the grounds that "it would be inefficient for Pacific Bell to conduct extensive software upgrades on switches that it [planned to] replace by June 1997."¹² We note that, as with Pacific Bell, Pond Branch is "in the process of changing its Siemens Stromberg-Carlson DCO switches..."¹³ We find that Twin Lakes made a good faith effort to obtain the *82 software in a timely fashion and that it plans to begin installing the software by January 21, 1997. Further, a limited number of subscriber lines would be affected by the waivers. Under these circumstances we conclude that granting the waivers will serve the public interest.

10. We find also that granting Sioux Valley and Hills, Northland, and Craw-Kan additional time to install the *82 software will serve the public interest. We conclude, however, that these carriers are only granted a waiver of the *82 requirement until July 1, 1997. We find that a six month waiver of the *82 requirement will limit the amount of time that subscribers are without *82 per line unblocking capability, and still provide time for Sioux Valley and Hills, Northland, and Craw-Kan to upgrade their switches. Although the carriers state that subscribers could rely on *67 to unblock their lines, we note that in the May 5, 1995 Order, after reviewing similar arguments in the record, the Commission found that using *67 and *82 "maximizes consumer choice" and "eliminates customer confusion."¹⁴ The Commission also found that "universal and exclusive use of *82 to unblock avoids the risks of inadvertently defeating a block by dialing *67."¹⁵ Finally, we note that the Commission has previously addressed, and rejected, arguments that carriers should not be required to invest in *82 software since the Commission

¹¹ See also Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (waiver appropriate if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest).

¹² See Rule and Policies Regarding Calling Number Identification Service - Caller ID, Order, CC Docket No. 91-281, released October 4, 1996 ("October 4, 1996 Order").

¹³ See Pond Branch petition at 2.

¹⁴ See Rules and Policies Regarding Calling Number Identification Service - Caller ID, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11728 (1995)("May 5, 1995 Order").

¹⁵ *Id.* at 11729.

does not require carriers to invest in SS7 technology.¹⁶

11. We recognize that Sioux Valley and Hills, Northland, and Craw-Kan will incur some costs in providing subscribers with *82 capabilities. We find, however, that although the carriers provide some evidence to support their arguments, they have failed to provide sufficient evidence to warrant waivers for the length of time that they request. We note that Sioux Valley and Hills raise the same economic feasibility arguments in this proceeding as they raised in their request for waiver of the December 1, 1995 deadline for complying with these rules. The Bureau explicitly rejected these arguments, finding that the carriers had provided "scant" evidence to support their claims that it is economically infeasible to deploy software supporting the *82 unblocking capability.¹⁷ The Bureau noted that "while some [carriers] provided limited information regarding the cost of upgrading their software" the carriers failed to "indicate whether they will obtain other capabilities" through installing *82 software "beyond the unblocking capability."¹⁸ In this proceeding, the carriers provide cost information and identify the number of subscribers affected, but once again have failed to provide specific information on the capabilities that the software upgrades will provide. The carriers state that Release 20 has no features of interest to them, other than *82 functionality, but they fail to identify these features nor explain why they would not use them. Further, the carriers have had ample time to comply with the *82 requirement because the Commission had previously stayed the rules for one year in its November 30, 1995 Order. Thus, in light of our careful balancing of privacy interests of the calling, and called parties, and our objective of having uniform blocking and unblocking capabilities, we find that the carriers arguments are not sufficient to justify long term waivers.¹⁹ Consequently, we grant Sioux and Hills, Northland, and Craw-Kan a waiver until July 1, 1997 to come into compliance with our rules, but we do not anticipate future waivers for these carriers.

12. We deny Middleburgh's petition for a waiver because it has not demonstrated why it needs a waiver until December 31, 1998. In Wait Radio the court stated that "when an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."²⁰ Middleburgh has failed to satisfy this burden. Although the carrier states that it was "economically infeasible" for it to offer *82 capability on its DCO switches by the Commission's January 1, 1997, it fails to provide information to support this allegation, such as the number of switches that it would have to upgrade or what specific circumstances

¹⁶ See November 30, 1995 Order at 1750.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See Id.*

²⁰ Wait Radio v. Federal Communications Commission, 418 F.2d 1153, 1157 (1969).

necessitate two years to complete the software installation process. Further, Middleburgh's statement that it "is possibly subject to further upgrades for other reasons in a short time frame,"²¹ is speculative and not supported by a description of specific circumstances. For example, Middleburgh fails to indicate what upgrades it must conduct on its DCO switches, besides *82 software installation. The carrier also fails to specify why it must complete the "other" upgrades in a "short time frame." Middleburgh does not even provide the number of subscribers that would be affected by a grant of its waiver request. We therefore deny Middleburgh's request for a waiver.

13. Consistent with our previous waivers, the rule provision that would bar the carriers from using *67 as an unblocking device also is waived, for lines served by DCO switches. We further waive our customer notification requirement regarding *82 unblocking capability, as it applies to the waivers granted in this order.

14. To assist the Bureau in monitoring the carriers' compliance with the Commission's rules, these waivers, with the exception of Twin Lakes, are conditioned on the carriers' filing reports with the Network Services Division. Pond Branch shall file reports on April 1, 1997, July 1, 1997, and October 1, 1997. Sioux Valley and Hills, Northland, and Craw-Kan shall file reports on March 3, 1997 and May 1, 1997. Reports shall contain the following information: (1) the status of any DCO switch replacements; (2) the status of any operating (generic) software upgrades to the DCO switches; and (3) an updated implementation schedule, with explanation of any failures to meet the previous schedule and corrective action being taken. No condition is imposed upon Twin Lakes because its waiver only extends to February 28, 1996.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED, pursuant to the authority delegated in Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the effectiveness of the Commission rules contained in Section 64.1601(b), which require a carrier to recognize *82 as a caller's request that privacy not be provided and bar a carrier from recognizing *67 as a caller's request that privacy not be provided, as these rules apply to lines served by DCO switches, IS WAIVED until February 28, 1997 for Twin Lakes, until July 1, 1997 for Sioux Valley and Hills, Northland and Craw-Kan, and until December 31, 1997 for Pond Branch.

16. IT IS FURTHER ORDERED, pursuant to authority delegated in Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the effectiveness of the Commission's rule contained in Section 64.1603, which requires a carrier to provide customer notification regarding the *82 unblocking capability IS WAIVED until February 28, 1997 for Twin Lakes, until July 1, 1997 for Sioux Valley and Hills, Northland and Craw-Kan, and until December 31, 1997 for Pond Branch.

²¹ See Middleburgh petition at 2.

17. IT IS FURTHER ORDERED that a request for a temporary waiver of the *82 requirement for Siemens Stromberg Carlson DCO switches IS GRANTED until February 28, 1997 for Twin Lakes, until July 1, 1997 for Sioux Valley and Hills, Northland and Craw-Kan, and until December 31, 1997 for Pond Branch.

18. Accordingly, IT IS ORDERED, pursuant to the authority delegated in Section 0.91 of the Commission's rules, 47 C.F.R. § 0.91 and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Middleburgh's request for waiver of Section 64.1601(b) of the Commission's rules IS DENIED.

19. IT IS FURTHER ORDERED that the waivers granted for Sioux Valley and Hills, Northland, Craw-Kan, and Pond Branch are conditioned on the carriers' compliance with the requirements imposed by this Order.

20. IT IS FURTHER ORDERED that this order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION



Geraldine A. Matise
Chief, Network Services Division
Common Carrier Bureau