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

In the Matter of	)	
	)	
Business Savings Plan	)	IC Nos. 02-S69170
	)	02-S71448
Complaints Regarding	)	02- S72566
Unauthorized Change of	)	02-S73248
Subscriber's Telecommunications Carrier	)	02-S73400
	)	02-S73380
	)	02-S76248
	)	02-S76418
	)	02-S76452

ORDER

Adopted: April 24, 2003 **Released: April 28, 2003**

By the Acting Deputy Chief, Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaints[1] alleging that Business Savings Plan (BSP) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.[2] We conclude that BSP's actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant Complainants' complaints.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).[3] Section 258 prohibits the practice of

[1] *See* Appendix A.

[2] *See* 47 C.F.R. §§ 64.1100 – 64.1190.

[3] 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 Carrier*s, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture (continued….)

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.[4] In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[5] Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.[6] Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 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.[7]

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.[8] Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.[9] Carriers should note that our actions in this Order do not preclude the Commission from taking action, if warranted, pursuant to Section 503 of the Act.[10]

4. We received Complainants' complaints alleging that Complainants' telecommunications services providers had been changed from their authorized carriers to BSP without Complainants' authorization.[11] Pursuant to Sections 1.719 and 64.1150 of our rules,[12]

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).

[4] 47 U.S.C. § 258(a).

[5] *See* 47 C.F.R. § 64.1120(b).

[6] 47 U.S.C. § 258(a).

[7] *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

[8] *See* 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

[9] *See* 47 C.F.R. §§ 64.1140, 64.1170.

[10] *See* 47 U.S.C. § 503.

[11] *See* Appendix A.

we notified BSP of the complaints and BSP responded.[13] BSP states that it does not have a letter of agency (LOA) or third party verification recording (TPV) because the customer's account was acquired during a bulk transfer. Our rules allow carriers to transfer customers in bulk without an LOA or TPV.[14] A carrier must, however, send notice of the switch to the consumer and file that notice with the Commission at least thirty days before the switch.[15] BSP has failed to comply with the filing requirement. BSP has failed to produce clear and convincing evidence that Complainant authorized a carrier change.[16] Therefore, we find that BSP's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss BSP's liability below.[17]

5. BSP must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.[18] We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the authorized carriers nor BSP may pursue any collection against Complainants for those charges.[19] Any charges imposed by BSP on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change.[20]

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed by Complainants[21] against Business Savings Plan ARE GRANTED.

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[12] 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[13] *See* Appendix A.

[14] *See* 47 C.F.R. 64.1120(e).

[15] *See* 47 C.F.R. 64.1120(e)(1)(3).

[16] *See* 47 C.F.R. § 64.1150(d).

[17] If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See* 47 C.F.R. § 1.719.

[18] *See* 47 C.F.R. § 64.1160(b).

[19] *See* 47 C.F.R. § 64.1160(d).

[20] *See* 47 C.F.R. §§ 64.1140, 64.1160.

[21] *See* Appendix A.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred to the relevant Complainant and neither the authorized carrier nor Business Savings Plan may pursue any collection against Complainants for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Acting Deputy Chief
Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX A

INFORMAL COMPLAINT NUMBER	DATE OF COMPLAINT	DATE OF CARRIER RESPONSE	NAME OF AUTHORIZED CARRIER
02-S69170	March 7, 2002	April 24, 2002	Qwest
02-S71448	February 26, 2002	June 11, 2002	Isterra
02-S72566	April 10, 2002	July 11, 2002	Qwest
02-S73248	March 26, 2002	July 12, 2002	AT&T
02-S73400	April 8, 2002	August 23, 2002	CoreComm
02-S73380	April 4, 2002	July 12, 2002	IDT/Worldcom
02-S76248	May 8, 2002	July 30, 2002	AT&T
02-S76418	June 6, 2002	August 1, 2002	Source One
02-S76452	June 4, 2002	August 1, 2002	CierraCom System