

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

In the Matter of	)	
	)	
LCR Telecommunications, LLC.	)	IC No. 02-S80444
	)	02-S80503
Complaints Regarding	)	02-S80859
Unauthorized Change of	)	02-S82020
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: April 29, 2003**

**Released: April 30, 2003**

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

1. In this Order, we consider the complaints<sup>1</sup> alleging that LCR Telecommunications, LLC. (LCR) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that LCR'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).<sup>3</sup> Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

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<sup>1</sup> See Appendix A.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</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).

of a provider of telephone exchange service or telephone toll service.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

4. We received Complainants' complaints alleging that Complainant's telecommunications services providers had been changed from their authorized carriers to LCR without Complainants' authorization.<sup>11</sup> Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>12</sup> we notified LCR of the complaints and LCR responded.<sup>13</sup> LCR submitted a third party

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<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> See 47 C.F.R. § 64.1120(b).

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> 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.

<sup>8</sup> 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.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See 47 U.S.C. § 503.

<sup>11</sup> See Appendix A.

<sup>12</sup> 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).

<sup>13</sup> See Appendix A.

verification tape as evidence of an authorized change in complainant's service provider. LCR's sales representative, however, failed to drop off the line once the three way call was established, as required by our rules.<sup>14</sup> LCR has failed to produce clear and convincing evidence that Complainant authorized a carrier change.<sup>15</sup> Therefore, we find that LCR's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss LCR's liability below.<sup>16</sup>

5. Pursuant to Section 64.1170(b) our rules, LCR must forward to the relevant authorized carriers an amount equal to 150% of all charges paid by the relevant subscriber to LCR.<sup>17</sup> LCR must forward to the relevant authorized carriers the amounts, along with copies of any telephone bills issued from LCR to the Complainants.<sup>18</sup> Within ten days of receipt of this amount, the relevant authorized carriers shall provide a refund or credit to the relevant Complainants in the amount of 50% of all charges paid by the relevant Complainants to LCR. Complainants have the option of asking the authorized carriers to re-rate LCR's charges based on the authorized carrier's rates and, on behalf of Complainants, seek from LCR, any re-rated amount exceeding 50% of all charges paid by Complainants to LCR. The authorized carriers must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to the relevant Complainants.<sup>19</sup> If the authorized carriers have not received the reimbursement required from LCR within 45 days of the release of this Order, the authorized carriers must notify the Commission and Complainants accordingly. The authorized carriers also must notify the Complainants of his or her right to pursue a claim against LCR for a refund of all charges paid to LCR.<sup>20</sup>

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<sup>21</sup> against LCR ARE GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(b) of the Commission's rules, 47 C.F.R. § 64.1170(b), that LCR must forward to the authorized carriers an amount equal to 150% of all charges paid by the subscriber along with copies of any telephone

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<sup>14</sup> See 47 C.F.R. § 6.1120(c)(3)(ii).

<sup>15</sup> See 47 C.F.R. § 64.1150(d).

<sup>16</sup> 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.

<sup>17</sup> 47 C.F.R. § 64.1170(b).

<sup>18</sup> *Id.*

<sup>19</sup> See 47 C.F.R. § 64.1170(c).

<sup>20</sup> See 47 C.F.R. § 64.1170(e).

<sup>21</sup> See Appendix A.

bills issued from the company to the Complainants within ten (10) days of the release of this order.

8. 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 LCR may pursue any collection against Complainants for those charges.

9. 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

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>	<u>NAME OF AUTHORIZED CARRIER</u>
02-S80444	09/19/02	10/16/02	AT&T
02-S80503	09/23/02	10/18/02	Globalcom
02-S80859	10/09/02	11/02/02	Touch America
02-S82020	12/30/02	02/07/03	AT&T