

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

In the Matter of)	
)	
Liberty OnLine)	IC No. 02-S81501
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: June 11, 2003

Released: June 12, 2003

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we reconsider on our own motion our Prior Order, DA 03-1693 (Prior Order), released on May 15, 2003.¹ In the Prior Order, we found that Liberty OnLine (Liberty) changed the above-referenced Complainant's telecommunications service provider without obtaining proper authorization and verification.² On reconsideration, we conclude that Liberty's actions did not result in an unauthorized change in Complainant's telecommunications service provider; and we, therefore, modify our findings in the Prior Order and deny Complainant's complaint.

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 *In the Matter of Liberty Online, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, DA No. 03-1693 (rel. May 15, 2003).

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, 16 FCC Rcd 4999 (2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116, (rel. May 23, 2003). 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

“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 additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received Complainant’s complaint on November 5, 2002, alleging that in October 2002, complainant’s telecommunications service provider had been changed from their authorized carrier to Liberty without Complainant’s authorization. Pursuant to Sections 1.719

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).

⁴ 47 U.S.C. § 258(a).

⁵ *See* 47 C.F.R. § 64.1120.

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.

and 64.1150 of our rules,¹¹ we notified Liberty of the complaint and Liberty responded on December 26, 2002.¹² Liberty provided a third party verification and we found in the Prior Order that Liberty's actions resulted in an unauthorized change of Complainant's telecommunications service provider.¹³ Upon reconsideration, however, we find that Liberty is a company that "provides Internet solutions for the small business enterprise" and that the disputed charge was for the provision of a customized website, e-mail addresses and other internet service provider services.¹⁴ We find, therefore, that Liberty's actions did not result in an unauthorized change of Complainant's telecommunications service provider, and we deny Complainant's complaint.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.108 of the Commission's rules, 47 C.F.R. §1.108, that In the Matter of Liberty OnLine, DA 03-1693, IS AMENDED TO THE EXTENT INDICATED HEREIN.

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 complaint filed by Complainant (IC No. 02-S81501) against Liberty OnLine IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

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

¹¹ 47 C.F.R. § 1.719 (procedures 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).

¹² *See Liberty Response*, December 26, 2002.

¹³ *See Prior Order* at 3.

¹⁴ *See Liberty Response* at 1.