

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

In the Matter of)	
)	
Broadview Networks, Inc.)	IC No. 03-S84670
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: May 4, 2004

Released: May 5, 2004

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

1. In this Order, we consider the complaint¹ alleging that Broadview Networks, Inc. (Broadview) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Broadview's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant 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 Informal Complaint No. IC 03-S84670, filed August 4th, 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, FCC 01-67 (rel. Feb. 22, 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 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).

“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 August 4th, 2003, alleging that Complainant’s telecommunications service provider had been changed to Broadview without Complainant’s authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified

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.

¹¹ 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).

Broadview of the complaint and Broadview responded on October 3rd, 2003.¹² Broadview states that on January 10th, 2002, it entered into an asset purchase agreement with Cavalier Telephone LLC.¹³ According to Broadview, on January 24th, 2002, it began providing the Complainant with service.¹⁴

5. In order to ascertain whether an unauthorized carrier change has occurred, we must determine whether the Complainant's service provider was changed in accordance with our carrier change rules. According to our rules, a carrier may only change a subscriber's telecommunications service provider by obtaining a letter of agency (LOA) or a third party verification (TPV), or through our streamlined carrier change procedures.¹⁵ Based on the information provided by Broadview, it did not use any of these methods before it began providing service to the complainant on January 24th, 2002.¹⁶ Instead, Broadview asserts that *de facto* proof of compliance with the FCC's carrier change verification rules is evidenced by state utility commission discontinuance actions taken on February 19th and 22nd, 2002, nearly a month after Broadview began providing service to the Complainant.¹⁷ We disagree. On its own accord, Broadview began providing service to the Complainant well before the action was taken by the state utility commissions. The fact that Broadview was eventually ordered to comply with discontinuance requirements does not alter the fact that Broadview did not originally comply with the Commission's carrier change procedures with respect to the Complainant, nor did it file a request for waiver of these procedures.¹⁸ We find that Broadview has failed to produce clear

¹² Broadview's Response to Informal Complaint No. IC 03-S84670, October 3, 2003 (Broadview Response).

¹³ *See id.* at p. 3.

¹⁴ Broadview Response at p. 4.

¹⁵ *See* 47 C.F.R. § 64.1120-30.

¹⁶ *See* Broadview Response at p. 8. Our rules allow a telecommunications provider to acquire all or part of another carrier's subscriber base without obtaining each subscriber's individual authorization and verification, provided that the acquiring carrier complies with our streamlined procedures. To comply with these procedures, the acquiring carrier must file with the Commission's Office of the Secretary, no later than 30 days before the planned transfer, a letter notification in CC Docket 00-257 that meets all the requirements listed in Section 64.1120(e)(1) of our rules, certifies as to compliance with the requirement to provide 30 days advance subscriber notice in accordance with section 64.1120(e)(3), and has attached a copy of the notice to be sent. Broadview did not submit any such notification, nor did it petition for waiver of any of the verification rules, including waiver of the 30 day time period for advance notice and certification. We note that on January 25, 2002, the Commission received from Broadview a letter, dated January 22, 2002 (no docket number included) stating that it had entered into an agreement with Cavalier that did not involve the acquisition of customers. However, on January 24, 2002, a day before the Commission received this letter, Broadview states that it began providing service to Complainant.

¹⁷ *See* Broadview Response at p. 7.

¹⁸ We note that the state utility commission quotes from August 2003 cited by Broadview assert that LOAs need not be obtained from individual subscribers in bankruptcy transfer cases, and that the FCC, prior to the issuance of the streamlined transfer rules, had issued waivers of the individual authorization requirements (Broadview Response at p. 7). Neither of these statements is contrary to the Commission's rules which state that individual consent (via LOA or TPV) in accordance with section 64.1120(c) is not needed if the streamlining (continued....)

and convincing evidence that Complainant authorized a carrier change.¹⁹ Therefore, we find that Broadview's actions resulted in an unauthorized change in Complainant's telecommunications service provider, and we discuss Broadview's liability below.²⁰

6. Broadview must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.²¹ 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 Complainant's authorized carrier nor Broadview may pursue any collection against Complainant for those charges.²² Any charges imposed by Broadview on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change.²³

7. 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 against Broadview Networks, Inc. IS GRANTED.

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

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procedures are followed. Broadview, however, did not comply with the streamlining procedures, nor did it petition for waiver of these requirements.

¹⁹ See 47 C.F.R. § 64.1150(d).

²⁰ 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.

²¹ *See* 47 C.F.R. § 64.1160(b).

²² *See* 47 C.F.R. § 64.1160(d).

²³ *See* 47 C.F.R. §§ 64.1140, 64.1160.

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

FEDERAL COMMUNICATIONS COMMISSION

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