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

In the Matter of	)	
	)	
Primus Telecommunications, Inc.	)	IC No. 03-S85589
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: July 20, 2004 **Released: July 28, 2004**

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

1. In this Order, we consider the complaint filed by Complainant[1] alleging that Primus Telecommunications, Inc. (Primus) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.[2] We conclude that Primus'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 "slamming," the submission or execution of an unauthorized change in a subscriber's selection

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[1] Informal Complaint No. IC 03-S85589, filed November 14, 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 Carrier*s, 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.[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 14, 2003, alleging that Complainant's telecommunications service provider had been changed to Primus without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,[11] we notified

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[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).

Primus of the complaint and Primus responded on March 5, 2004.[12] Primus did not submit a third party verification or letter of agency, as required by our rules.[13] We find that Primus has failed to produce clear and convincing evidence that Complainant authorized a carrier change.[14] Therefore, we find that Primus's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss Primus's liability below.[15]

5. Pursuant to Section 64.1170(b) our rules, Primus must forward to Net895 an amount equal to 150% of all charges paid by the subscriber to Primus.[16] Therefore, Primus must forward to Net895 150% of the amount, along with copies of any telephone bills issued from the company to the Complainant.[17] Within ten days of receipt of this amount, Net895 shall provide a refund or credit to Complainant in the amount of 50% of all charges paid by Complainant to Primus. Complainant has the option of asking Net895 to re-rate Primus's charges based on Net895's rates and, on behalf of Complainant, seek from Primus, any re-rated amount exceeding 50% of all charges paid by Complainant to Primus. Net895 must also send a notice to the Commission, referencing this Order, stating that is has given a refund or credit to Complainant.[18] If Net895 has not received the reimbursement required from Primus within 45 days of the release of this Order, Net895 must notify the Commission and Complainant accordingly. Net895 also must notify the Complainant of his or her right to pursue a claim against Primus for a refund of all charges paid to Primus.[19]

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 against Primus IS 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 Primus must forward to Net895 an amount equal to 150% of all charges paid by the subscriber along with copies of any telephone bills

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[12] Primus's Response to Informal Complaint No. IC 03-S85589, received March 5, 2004.

[13] *See* 47 C.F.R. § 64.1120-64.1130.

[14] *See* 47 C.F.R. § 64.1150(d).

[15] 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.

[16] 47 C.F.R. § 64.1170(b).

[17] *Id.*

[18] *See* 47 C.F.R. § 64.1170(c).

[19] *See* 47 C.F.R. § 64.1170(e).

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

8. 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