

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

In the Matter of	)	
	)	
UKI Communications	)	IC Nos. 03-S83336
	)	03-S85060
Complaints Regarding	)	03-S85185
Unauthorized Change of	)	03-S85269
Subscriber's Telecommunications Carrier	)	03-S85355
		03-S85482
		03-S85555
		03-S85556
		03-S85629
		03-S85707
		03-S85715
		03-S85846
		03-S85780
		03-S85827
		03-I0067917S
		03-I0070931S
		03-I0075228S
		03-I0075668S
		03-I0078910S
		03-S000331S
		04-S85912
		04-S86203
		04-S86480
		04-S86486
		04-S87078
		04-S87058

**ORDER**

**Adopted: September 9, 2004**

**Released: September 13, 2004**

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

1. In this Order, we consider complaints<sup>1</sup> alleging that UKI Communications, Inc. (UKI) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We

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

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

conclude that UKI'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 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

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<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); 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).

<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> *See* 47 C.F.R. § 64.1120.

<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.

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 additional action, if warranted, pursuant to Section 503 of the Act.<sup>10</sup>

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed from their authorized carriers to UKI without Complainants' authorization.<sup>11</sup> Pursuant to sections 1.719 and 64.1150 of our rules,<sup>12</sup> we notified UKI of the complaints and UKI did not file respond. We find that UKI has failed to provide clear and convincing evidence of a valid authorized carrier changes by Complainants. Therefore, we find that UKI's actions resulted in unauthorized changes in Complainants' telecommunications service providers and we discuss UKI's liability below.<sup>13</sup>

5. UKI 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.<sup>14</sup> We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainants' authorized carrier nor UKI may pursue any collection against Complainants for those charges.<sup>15</sup> Any charges imposed by UKI on the subscribers for service provided after this 30-day period shall be paid by the subscribers to the Complainants' respective authorized carrier at the rate the subscribers were paying to the respective authorized carrier at the time of the change in service.<sup>16</sup>

6. Accordingly, IT IS ORDERED that, pursuant to section 258 of the

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<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> If any Complainant is unsatisfied with the resolution of this complaint, such 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 such 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 such Complainant. See 47 C.F.R. § 1.719.

<sup>14</sup> See 47 C.F.R. § 64.1160(b).

<sup>15</sup> See 47 C.F.R. § 64.1160(d).

<sup>16</sup> See 47 C.F.R. §§ 64.1140, 64.1160.

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 against UKI ARE GRANTED.

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 and neither the authorized carriers nor UKI 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, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

## APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>AUTHORIZED CARRIER</u>
03-S83336	03/12/03	AT&T
03-S85060	09/22/03	Worldcom
03-S85185	12/10/03	AT&T
03-S85269	09/05/03	AT&T
03-S85355	10/22/03	Sprint
03-S85482	10/23/03	Worldcom
03-S85555	11/06/03	IDT
03-S85556	11/13/03	Southwestern Bell
03-S85629	11/20/03	Sprint
03-S85707	11/13/03	Verizon
03-S85715	11/13/03	AT&T
03-S85846	12/19/03	Verizon
03-S85780	11/03/03	CloseCall America
03-S85827	12/16/03	Verizon
03-I0067917S	10/07/03	AT&T
03-I0070931S	11/04/03	Southwestern Bell
03-I0075228S	12/16/03	Verizon
03-I0075668S	11/12/03	Verizon
03-I0078910S	12/08/03	Verizon
03-S000331S	10/20/03	Worldcom

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<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>AUTHORIZED CARRIER</u>
04-S85912	12/19/03	Verizon
04-S86203	02/04/04	Worldcom
04-S86480	01/28/04	Verizon
04-S86486	02/10/04	AT&T
04-S87078	03/15/04	Verizon
04-S87058	03/30/04	Southwestern Bell