

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

In the Matter of)	
)	
Sprint Communications Company	)	IC Nos. 04-S86003
	)	04-S86046
Complaints Regarding	)	04-S86118
Unauthorized Change of	)	04-S86127
Subscriber's Telecommunications Carrier	)	04-S86167
	)	04-S86170
	)	04-S86375
	)	04-S86546
	)	04-S86666
	)	04-S86690
	)	04-S86691
	)	04-S86773
	)	04-S87263
	)	04-S87444
	)	04-S87540
	)	04-S87689
	)	04-S87934
	)	04-S88341
	)	04-S88372
	)	04-I0104344S
	)	04-I0107720S
	)	04-W7505179S

ORDER

Adopted: December 2, 2004

Released: December 6, 2004

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

1. In this Order, we consider the complaints¹ alleging that Sprint Communications Company (Sprint) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Sprint's actions did result in an unauthorized change in Complainants' telecommunications service providers and we grant Complainants' complaints.

¹ See Appendix A.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

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 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

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).

⁴ 47 U.S.C. § 258(a).

⁵ *See* 47 C.F.R. § 64.1120(b).

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.

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 action, if warranted, pursuant to section 503 of the Act.¹⁰

4. We received Complainants' complaints alleging that Complainants' telecommunications services providers had been changed from their authorized carriers to Sprint without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Sprint of the complaints and Sprint responded.¹³ Sprint states that authorization was received and confirmed through signed letters of agency (LOAs). Sprint's LOAs, however, were not dated by the subscribers as required by our rules.¹⁴ Sprint has failed to produce clear and convincing evidence that Complainants authorized a carrier change.¹⁵ Therefore, we find that Sprint's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss Sprint's liability below.¹⁶

5. Pursuant to Section 64.1170(b) our rules, Sprint must forward to the authorized carriers an amount equal to 150% of all charges paid by each subscriber to Sprint.¹⁷ According to the complaints, Sprint must forward to the authorized carriers the amounts, along with copies of any telephone bills issued from the company to the Complainants.¹⁸ Within ten days of receipt of this amount, the authorized carriers shall provide a refund or credit to Complainants in

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 See Appendix A.

¹² 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).

¹³ See Appendix A.

¹⁴ See 47 C.F.R. § 64.1130(b).

¹⁵ See 47 C.F.R. § 64.1150(d).

¹⁶ If a 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.

¹⁷ 47 C.F.R. § 64.1170(b).

¹⁸ *Id.*

the amount of 50% of all charges paid by Complainants to Sprint. Complainants have the option of asking the authorized carriers to re-rate Sprint's charges based on the authorized carriers rates and, on behalf of Complainants, seek from Sprint, any re-rated amount exceeding 50% of all charges paid by the Complainants to Sprint. The authorized carriers must also send a notice to the Commission, referencing this Order, stating that is has given a refund or credit to Complainants.¹⁹ If the authorized carriers have not received the reimbursement required from Sprint 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 respective Complainant of his or her right to pursue a claim against Sprint for a refund of all charges paid to Sprint.²⁰

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 Complainants²¹ against Sprint 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), Sprint must forward to the authorized carriers an amount equal to 150% of all charges paid by the subscribers along with copies of any telephone bills issued from Sprint to the Complainants 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

Richard Smith, Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

¹⁹ See 47 C.F.R. § 64.1170(c).

²⁰ See 47 C.F.R. § 64.1170(e).

²¹ See Appendix A.

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	APPENDIX A <u>DATE OF CARRIER RESPONSE</u>
04-S86003	November 12, 2003	March 5, 2004
04-S86046	December 22, 2003	May 5, 2004
04-S86118	January 29, 2004	March 19, 2004
04-S86127	January 18, 2004	April 12, 2004
04-S86167	February 2, 2004	April 2, 2004
04-S86170	January 29, 2004	March 15, 2004
04-S86375	February 10, 2004	April 9, 2004
04-S86546	March 31, 2004	June 7, 2004
04-S86666	April 7, 2004	May 28, 2004
04-S86690	April 12, 2004	May 7, 2004
04-S86691	February 17, 2004	May 21, 2004
04-S86773	March 23, 2004	June 4, 2004
04-S87263	May 25, 2004	July 27, 2004
04-S87444	May 25, 2004	August 12, 2004
04-S87540	June 11, 2004	July 16, 2004
04-S87689	June 14, 2004	August 12, 2004
04-S87934	July 19, 2004	September 7, 2004
04-S88341	August 30, 2004	October 20, 2004
04-S88372	September 1, 2004	November 3, 2004
04-I0104344S	February 25, 2004	September 21, 2004
04-I0107720S	June 14, 2004	September 24, 2004
04-W7505179S	January 2, 2004	February 6, 2004