

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

In the Matter of)	
)	
Advantage Telecommunications Corporation)	IC Nos. 03-I0052641S
)	03-I0056842S
)	03-S83164
)	03-S83173
Complaint Regarding)	03-S83311
Unauthorized Change of)	03-S84365
Subscriber's Telecommunications Carrier)	03-S84404
)	03-S84960
)	03-S85056

ORDER

Adopted: December 17, 2004

Released: December 21, 2004

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

1. In this Order, we consider the complaints¹ alleging that Advantage Telecommunications Corporation (Advantage) changed complainants' telecommunications service provider without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Advantage'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).³ Section 258 prohibits the practice of

¹ See Appendix A.

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 (continued....)

“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

(Continued from previous page) _____
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.

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.

4. We received Complainants' complaints alleging that Complainant's telecommunications service providers had been changed to Advantage without Complainants' authorization¹¹. Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified Advantage of the complaints and Advantage responded.¹³ Advantage states that authorizations were received and confirmed through third party verification. Advantage's third party verifier, however, failed to confirm that the complainants wanted to change intraLATA service as required by our rules.¹⁴ We find that Advantage has failed to produce clear and convincing evidence that Complainants authorized a carrier change.¹⁵ Therefore, we find that Advantage's actions resulted in an unauthorized change in Complainants' telecommunications service providers and we discuss Advantage's liability below.¹⁶

5. Advantage 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.¹⁷ 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 Advantage may pursue any collection against Complainants for those charges.¹⁸ Any charges imposed by Advantage on the subscribers for service provided after this 30-day period shall be paid by the subscriber to the authorized carriers at the rates the subscribers were paying to the authorized carriers at the time of the unauthorized changes.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

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 Advantages verifier confirmed the switch for "in state" long distance and "state to state" long distance. As each complainants' state has more than one LATA, "in-state" long distance could be interLATA.

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 See 47 C.F.R. § 64.1160(b).

¹⁸ See 47 C.F.R. § 64.1160(d).

¹⁹ See 47 C.F.R. § 64.1170(d).

1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaints filed against Advantage Telecommunications Corporation ARE GRANTED.

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>DATE OF CARRIER RESPONSE</u>
03-I0052641S	July 30, 2003	July 6, 2004
03-I0056842S	September 8, 2003	January 28, 2004
03-S83164	March 24, 2003	June 13, 2003
03-S83173	March 27, 2003	July 29, 2003
03-S83311	March 25, 2003	July 29, 2003
03-S84365	July 9, 2003	December 3, 2003
03-S84404	July 14, 2003	November 26, 2003
03-S84960	September 8, 2003	January 28, 2004
03-S85056	September 18, 2003	January 16, 2004
