

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

In the Matter of	)	
	)	
United Systems Access Telecom, Inc.	)	IC No. 02-S80485
	)	02-S71574
Complaint Regarding	)	02-S70217
Unauthorized Change of	)	02-S76227
Subscriber's Telecommunications Carrier	)	02-S76435
		02-S74931
		02-S80355

**ORDER ON RECONSIDERATION**

**Adopted: February 27, 2004**

**Released: March 10, 2004**

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we reconsider DA 02-3520, DA 02-3519, DA 03-288, DA 03-1241, DA 03-1316, DA 03-2512, and DA 03-3377 (Prior Orders). In the Prior Orders, we found that United Systems Access Telecom, Inc. (USA) changed Complainants' telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>1</sup> We conclude that USA's actions did result in an unauthorized change in Complainants' telecommunications service providers, and we deny USA's petitions for reconsideration.

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>2</sup> Section 258 prohibits the practice of

<sup>1</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>2</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 (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.<sup>3</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>4</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>5</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>6</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 days after the unauthorized change.<sup>7</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>8</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>9</sup>

4. We received Complainants’ complaints alleging that Complainants’ telecommunications service providers had been changed USA without Complainants’

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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>3</sup> 47 U.S.C. § 258(a).

<sup>4</sup> See 47 C.F.R. § 64.1120.

<sup>5</sup> 47 U.S.C. § 258(a).

<sup>6</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.

<sup>7</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>8</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>9</sup> See 47 U.S.C. § 503.

authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>10</sup> we notified USA of the complaints and USA responded. In its responses, USA stated that Complainants' telecommunications service providers were changed when it purchased another company's customer base. We found that USA, failed to provide clear and convincing evidence of a valid authorized carrier change. USA now files petitions for reconsideration.

5. In its petitions, USA argues that it complied with the Commission's rules for a bulk transfer of customers by properly filing a letter notification with the Commission in CC Docket 00-257.<sup>11</sup> Our rules allow a telecommunications provider to acquire all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification provided that the acquiring carrier complies with our streamlined procedures.<sup>12</sup> 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 the requirements listed in Section 64.1120 (e)(1) of our rules, including proper customer notice.<sup>13</sup> USA's customer notice letter, however, does not contain the rates, terms, and conditions of its service, as is required by our rules.<sup>14</sup> While USA's notice states that the Complainants' rates will "stay the same" and that the Complainants can visit USA's website to "get a copy of USA Telecom's rates<sup>15</sup>," such statements do not meet our requirement that the subscriber notice contain "detailed information" as to the rates, terms and conditions of the services the acquiring carrier will provide.<sup>16</sup> Moreover, USA's notice does not mention USA's terms and conditions of service. Accordingly, we deny USA's petition for reconsideration.

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<sup>10</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>11</sup> See *Petition for Reconsideration of United Systems Access Telecom, Inc.* (filed May 28, 2003) at p. 4; *Petition for Reconsideration of United Systems Access Telecom, Inc.* (filed July 30, 2003) at p. 4.; *Petition for Reconsideration of United Systems Access Telecom, Inc.* (filed Nov. 25, 2003) at p.4.

<sup>12</sup> See 47 C.F.R. §§ 64.1120(e).

<sup>13</sup> See 47 C.F.R. § 64.1120(e)(1).

<sup>14</sup> See *id.*

<sup>15</sup> See letter to William F. Caton, Acting Secretary, Federal Communications Commission from Richard K Dryer, Counsel for United Systems Access Telecom, Inc., (filed April 15, 2002) at exhibit 2.

<sup>16</sup> See *First Report and Order*, 16 FCC Rcd. 11218 (2001) at ¶¶ 22-23. In the *First Report and Order*, we explicitly stated that "[w]e do not believe it appropriate to permit carriers to simply refer the affected subscribers to the acquiring carrier's website for this information [as to rates, terms and conditions]." We also rejected proposals to require the advance subscriber notice to include only the rates of the acquiring carrier, or no information at all regarding the new carrier's terms or conditions of service. See *id.* We note that in our order regarding 02-S74913, we stated that USA had failed to file its certification, and USA correctly states in its petition that it did in fact file the certification. With respect to 02-S70217 and 02-S71574, USA argues in its petition that it is not liable because Complainants' names were mistakenly added to the list of customers that it bought. Neither of these arguments, however, negates the fact that the underlying streamlined procedure filing is deficient, and that therefore transfer of Complainants' service was not properly authorized.

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 petitions for reconsideration filed by United Systems Access Telecom, Inc. ARE DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler, Deputy Chief  
Consumer & Governmental Affairs Bureau