

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

In the Matter of	)	
	)	
American Phone Services Corp.	)	IC No. 03-S83555
	)	03-S83624
Complaint Regarding	)	03-S82328
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**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 03-3711 and DA 03-3714 (Prior Orders). In the Prior Orders, we found that American Phone Services Corp. (APS) changed Complainants' telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>1</sup> On reconsideration, we conclude that APS's actions resulted in an unauthorized change in Complainants' telecommunications service providers, and we deny APS's petition 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 "slamming," the submission or execution of an unauthorized change in a subscriber's selection

<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 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.<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 APS without Complainants' authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>10</sup> we notified APS of the complaints and APS responded. In its responses, APS provided third party verification

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<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.

<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).

recordings as evidence of valid authorized changes of complainants' service. In each case, we found that APS violated our carrier change rules because its sales representative failed to drop off the line once the three way connection with the verifier was established. APS now files a petition for reconsideration.

5. In its petition, APS argues that its sales representative did not need to drop off the line because APS, in accordance with the Commission's rules, filed a certification with the Commission stating that it was not technically feasible for its sales agent to drop off the line after establishing the three way connection with the verifier.<sup>11</sup> While it is true that APS has filed such a certification, it had not done so at the time the verifications in question were conducted. In addition, even if a carrier has properly filed such a certification, and the sales agent remains on the line, final verification may only be validly obtained after the sales agent has finished providing information.<sup>12</sup> If additional information is provided by the sales agent during a verification attempt, the third party verification must be terminated, and a new, uninterrupted, verification may commence only after the carrier's sales agent has finished providing information.<sup>13</sup> In each of the verification recordings provided by APS, APS's sales representatives continued to speak and provide new information during the verification attempt. Thus, the recordings provided by APS do not contain evidence of final verifications. Accordingly, we deny USA's petition for reconsideration.

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 petition for reconsideration filed by American Phone Services Corp. IS 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

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<sup>11</sup> See *Petition for Reconsideration of American Phone Services Corp.* (filed January 12, 2004) at p. 1.

<sup>12</sup> See *Third Order on Reconsideration* at ¶ 40.

<sup>13</sup> See *id.*