

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

In the Matter of)	
)	
Americatel)	IC No. 02-S77196
)	
Complaint Regarding)	
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 02-9240 (November Order) released on November 1, 2002. In the November Order, we found that Americatel changed the Complainant's telecommunications service provider without obtaining proper authorization and verification.¹ On reconsideration, we affirm that Americatel's actions did result in an unauthorized change in Complainant's telecommunications service provider, and we deny Americatel'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).² Section 258 prohibits the practice of

¹ See 47 C.F.R. §§ 64.1100 – 64.1190.

² 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).

“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.³ 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.⁴ 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.⁵ 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.⁶

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.⁷ 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.⁸ 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.⁹

4. We received Complainant’s complaint on June 25, 2002 alleging that Complainant’s long distance service had been changed to Americatel without Complainant’s authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹⁰ we notified Americatel of

³ 47 U.S.C. § 258(a).

⁴ See 47 C.F.R. § 64.1120.

⁵ 47 U.S.C. § 258(a).

⁶ 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.

⁷ 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.*

⁸ See 47 C.F.R. §§ 64.1140, 64.1170.

⁹ See 47 U.S.C. § 503.

¹⁰ 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).

the complaint and Americatel responded on August 6, 2002.¹¹ Americatel stated that the Complainant “received said invoices in error” and “in very rare cases, the data contains errors and it appears that such was the case in this instance.” We found that Americatel had failed to produce clear and convincing evidence that Complainant authorized a carrier change.¹² Americatel now files a petition for reconsideration.¹³

5. Americatel states in its petition that the Complainant’s was not slammed, but was simply billed in error. Our rules require that within thirty days of receiving notice of the complaint, a carrier provide clear and convincing evidence of an authorized switch in complainant’s telecommunications provider. Nowhere in its response did Americatel refute the specific allegation in the complaint that it had billed the Complainant for, according to the complaint, “telephone services that you [Americatel] claim you provided to me.” When served with this allegation, Americatel simply responded that it “received said invoices in error,” with the result that Americatel charged the Complainant for telecommunications service. Given Americatel’s vague answer assigning the blame to “data,” we found that Americatel did not provide clear and convincing evidence of authorization to change Complainant’s service. In its petition, Americatel has failed to offer evidence as to why, given its original response to the complaint, our finding was in error. We therefore deny Americatel’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 Americatel 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

¹¹ Americatel Response to Informal Complaint No. IC 02-S77196, August 6, 2002.

¹² See 47 C.F.R. § 64.1150(d).

¹³ See *Petition for Reconsideration of Americatel* (filed December 12, 2002).