

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

In the Matter of)	
)	
Covergia, Inc.)	IC No. 05-S0196665
)	05-S0197679
Complaints Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: September 29, 2006

Released: October 2, 2006

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

1. In this Order, we consider the complaints¹ alleging that Covergia, Inc. (Covergia) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that Covergia's actions did result in a authorized changes in Complainants' telecommunications service providers and we grant Complainants' complaint.

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, 18 FCC Rcd 10,997 (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.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; (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

4. We received Complainants’ complaints alleging that Complainants’ telecommunications service providers had been changed to Convergia without Complainants’ authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Convergia of

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.

¹¹ 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 complaints and Convergia responded.¹² Convergia states that it is the long distance provider for Cognigen Networks.

5. 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 comply with our streamlined procedures.¹³ 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.¹⁴ Convergia, however, failed to follow these requirements.¹⁵ Therefore, we find that Convergia's actions resulted in unauthorized changes in Complainants' long distance service provider and we discuss Convergia's liability below.¹⁶

6. Convergia must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized changes 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 changes occurred and that neither the authorized carrier nor Convergia may pursue any collection against Complainants for those charges.¹⁸ Any charges imposed by Convergia on the subscribers for service provided after this 30-day period shall be paid by the subscribers to the subscribers respective authorized carrier at the rates the subscriber was paying to the respective authorized carrier at the time of the unauthorized changes.¹⁹

7. 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 against Convergia, Inc. ARE GRANTED.

¹² See Appendix A.

¹³ See 47 C.F.R. §§ 64.1120(e).

¹⁴ See 47 C.F.R. § 64.1120(e)(1).

¹⁵ See 47 C.F.R. § 64.1120(e)(3)(ii).

¹⁶ If either 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).

8. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized changes occurred and neither the authorized carrier nor Convergia may pursue any collection against Complainants for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX A

Informal Complaint Number	Date of Complaint	Date of Carrier Response	Authorized Carrier
05-S0196665	September 26, 2005	December 9, 2005	Enhanced Communications Group, LLC
05-S0197679	September 26, 2005	December 9, 2005	IDT Corp.