

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

In the Matter of)	
)	
AT&T Corporation)	IC No. 04-S85890
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: October 18, 2006

Released: October 19, 2006

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by AT&T Corp.¹ (AT&T) asking us to reverse a finding that AT&T changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that AT&T's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "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 The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁷

3. The rules require that a submitting carrier receive individual subscriber consent before a

¹ See Petition for Reconsideration of AT&T Corp. (filed July 23, 2004) (*Petition*) seeking reconsideration of *AT&T Corporation*, 19 FCC Rcd 12035 (2004) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 19 FCC Rcd 12035 (2004).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *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 Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed 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.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ 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.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on December 16, 2003, alleging that Complainant's telecommunications service provider had been changed from MCI to AT&T without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ the Division notified AT&T of the complaint.¹⁵ In response, AT&T submitted a third party verification recording (TPV) as proof of authorization of the switch.¹⁶ The TPV included with AT&T's response, however, did not contain any dialogue between the subscriber and the third party verifier and, thus, failed to include any of the confirmations required by the Commission's rules. For example, the verifier did not obtain confirmation that the consumer was authorized to make a carrier change or wanted to make a carrier change.¹⁷ The Division found that AT&T failed to produce clear and convincing evidence that Complainant authorized a carrier change and, therefore, that AT&T's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁸ AT&T seeks reconsideration of the

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ 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.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹¹ 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).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC 04-S85890, filed December 16, 2003.

¹⁴ 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).

¹⁵ See Notice of Informal Complaint No. IC 04-S85890 to AT&T Corporation from the Acting Deputy Chief, Division, CGB, dated January 15, 2004.

¹⁶ AT&T Corporation's Response to Informal Complaint No. IC-04-S85890, received February 10, 2004.

¹⁷ See 47 C.F.R. § 64.1120(c)(3)(iii). The dialogue on the TPV was between AT&T's sales agent and the third party verifier and between AT&T's sales agent and the subscriber. During the latter dialogue, the TPV stopped abruptly and nothing further could be heard on the recording.

¹⁸ See 47 C.F.R. § 64.1150(d).

Division Order.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny AT&T's *Petition*. In the *Petition*, AT&T acknowledges that the TPV originally submitted did not contain the entire dialogue between the customer and the third party verifier.¹⁹ AT&T now submits with its *Petition* a complete version of the TPV, and requests that the Commission reconsider the *Division Order* based on this new TPV.²⁰

7. The Commission's rules require the alleged unauthorized carrier to provide clear and convincing evidence of a valid authorized carrier change not more than 30 days after notification of the complaint.²¹ In order to introduce new facts on reconsideration, a petitioner must show either that: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through ordinary diligence, have been learned prior to such opportunity.²² New facts may also be introduced on reconsideration if the Commission determines that consideration of such facts is in the public interest.²³ AT&T does not argue that the new facts presented on reconsideration meet any of these requirements, and fails to offer any explanation for not submitting a complete TPV with its original response. AT&T also fails to explain why considering such facts would be in the public interest. To allow new facts to be submitted on reconsideration without good cause would hamper the public's interest in the quick resolution of complaints. While we realize that there may be some circumstances under which it is appropriate for a carrier to be given more than 30 days to respond fully to a slamming complaint (and we would consider all such requests), we do not believe it is appropriate to allow the submission of new facts when a carrier has been given ample time to respond in the first instance, and without any showing of good cause, after an order has been issued against the carrier. Accordingly, we deny AT&T's *Petition*.

III. ORDERING CLAUSES

8. 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, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the *Petition for Reconsideration* filed by AT&T on July 23, 2004, IS DENIED.

¹⁹ See *Petition* at 2.

²⁰ See *id.* at 3.

²¹ See 47 C.F.R. § 64.1150(d).

²² See 47 C.F.R. § 1.106(c).

²³ See *id.*

9. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Monica S. Desai, Chief
Consumer & Governmental Affairs Bureau