

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

In the Matter of)	
)	
Globalcom, Inc.)	IC No. 02-S77605
)	
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 Globalcom, Inc.¹ (Globalcom) asking us to reverse a finding that Globalcom 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 Globalcom'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 Globalcom, Inc. (filed May 27, 2003) (*Petition*) seeking reconsideration of *Globalcom, Inc.*, 18 FCC Rcd 8319 (2003) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 18 FCC Rcd 8319 (2003).

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 May 22, 2002, alleging that Complainant's telecommunications service provider had been changed from Complainant's authorized carrier to Globalcom without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ CGB notified Globalcom of the complaint.¹⁵ Instead of responding on the merits, Globalcom argued that the Commission does not have jurisdiction over local telephone service complaints, and that Globalcom considered the matter closed.¹⁶

II. DISCUSSION

6. While Globalcom's jurisdictional argument was not addressed in the *Division Order*, the Commission has affirmed that it does have jurisdiction over complaints regarding the unauthorized change of local telephone service, and that its verification rules apply to changes involving local telephone service.¹⁷ In addition, the Division found that Globalcom failed to produce clear and

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 02-S76605, filed May 22, 2002.

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 02-S76605 to Globalcom from the Deputy Chief, CGB, dated June 21, 2002.

¹⁶ Globalcom Response to Informal Complaint No. IC 02-S76605, received August 1, 2002.

¹⁷ See *Section 258 Order, supra*, at 14 FCC Rcd 1557, para. 81 ("We conclude that Congress has expressed its intent in section 258 to have the Commission adopt verification rules applicable to changes in both local exchange and telephone toll service.")

convincing evidence that Complainant authorized a carrier change and, therefore, found that Globalcom's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁸ Globalcom seeks reconsideration of the *Division Order*.

7. Based on the record before us, we affirm the *Division Order* and deny the *Petition*. Globalcom now submits a letter of agency (LOA) as evidence of a valid authorized change of Complainant's service.¹⁹ The Commission's rules state that the alleged unauthorized carrier must provide clear and convincing evidence of a valid authorized carrier change not more than 30 days after notification of the complaint.²⁰ 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.²¹ New facts may also be introduced on reconsideration if the Commission determines that consideration of such facts is in the public interest.²² Globalcom does not make any argument that its new facts meet any of these criteria. 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 do not find good cause to consider the LOA.

8. Globalcom also argues that during the pendency of the claim before the Commission, the Complainant and Globalcom agreed to settle all past, present, and/or future claims that could arise from the parties' contract, whereby Globalcom agreed to credit all amounts remaining from Complainant's account. This settlement, however, does not alter Globalcom's statutory liability under Section 258(b) of the Communications Act.²³ If a customer pays an unauthorized carrier, the unauthorized carrier must reimburse the authorized carrier (which was deprived of revenue from the Complainant due to the slam).²⁴ The authorized carrier then uses a portion of this money to reimburse the slammed consumer who has paid money to the unauthorized carrier.²⁵ As the Commission previously found, "the fact that a carrier has chosen to appease a customer does not alter its statutory liability . . . to the authorized carrier."²⁶

¹⁸ See 47 C.F.R. § 64.1150(d).

¹⁹ See *Petition*, Exhibit 1. See also a letter requesting and authorizing Globalcom's assumption of Complainant's local service. *Petition*, Exhibit 2.

²⁰ See 47 C.F.R. § 64.1150(d).

²¹ See 47 C.F.R. § 1.106(c).

²² See *id.*

²³ 47 U.S.C. § 258(b).

²⁴ *Id.* See also 47 C.F.R. § 64.1170.

²⁵ See 47 C.F.R. § 64.1170.

²⁶ 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, Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5009, 5130 at para. 81(2003).

9. Finally, Globalcom now argues that because the Complainant did not give notice of the claim until almost seven months after the date that Complainant received the first notice of the switch, the claim should be dismissed.²⁷ The Commission's carrier change rules, however, do not require a complainant to file a complaint within seven months.²⁸ Consequently, we deny Globalcom's *Petition*.

III. ORDERING CLAUSES

10. 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 Globalcom, Inc., on May 27, 2003, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Monica S. Desai, Chief
Consumer & Governmental Affairs Bureau

²⁷ See *Petition* at 1.

²⁸ See 47 C.F.R. § 64.1100, *et seq.* These rules do not identify a timeframe within which a complaint related to slamming must be filed.