

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

| | | |
|---|---|------------------|
| In the Matter of |) | |
| |) | |
| MCI, Inc. |) | IC No. 02-S72013 |
| |) | |
| 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 MCI, Inc.¹ (MCI) asking us to reverse a finding that MCI changed 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 MCI'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

¹ See Petition for Reconsideration filed by MCI, Inc. (filed Nov. 18, 2002) (*Petition*) seeking reconsideration of *WorldCom, Inc.* 17 FCC Rcd 20400 (2002) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). When the *Petition* was filed, MCI was known as WorldCom, Inc. For purposes of clarity and convenience, we will use the name "MCI" throughout this Order.

² See *Division Order*, 17 FCC Rcd 20400 (2002).

³ See 47 C.F.R. §§ 64.1100 – 64.1190. Two other complaints also were considered in the *Division Order*, but our decision here does not alter our finding regarding those complaints. See *Division Order*, 17 FCC Rcd 20400 (2002).

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.

3. The rules require that a submitting carrier receive individual subscriber consent before a 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 October 23, 2002, alleging that Complainant's telecommunications service provider had been changed from Eastern Telecom to MCI without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ CGB notified MCI of the complaint.¹⁵ MCI responded that conversion of Complainant's service was due to a data entry error.¹⁶ The Division found, therefore, that MCI had not provided clear and convincing evidence of a valid authorized change, and that its actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ MCI seeks reconsideration of the *Division Order*.¹⁸

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. 02-S72013, filed October 23, 2002.

¹⁴ 47 C.F.R. § 1.719 (procedures 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. 02-S72013, to MCI from the Deputy Bureau Chief, CGB, dated May 10, 2002.

¹⁶ MCI's Response to Informal Complaint No. 02-S72013, received June 11, 2002.

¹⁷ See *Division Order*, 17 FCC Rcd 20400 (2002); see also 47 C.F.R. § 64.1150(d).

¹⁸ See *Petition* at 1 and 5.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny MCI's *Petition*. In its *Petition*, MCI no longer states that the change of Complainant's service was the result of a data entry error.¹⁹ Instead, MCI now argues that another MCI customer mistakenly requested that MCI switch Complainant's phone number.²⁰ MCI submitted with its petition a third party verification recording of this request.²¹ The Commission's rules require the alleged unauthorized carrier to provide any responsive evidence "[n]ot more than 30 days after notification of the complaint."²² 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.²³ New facts may also be introduced on reconsideration if the Commission determines that consideration of such facts is in the public interest.²⁴

7. MCI does not offer any explanation as to why the mistake by the other MCI customer could not have been discovered with ordinary diligence before its initial response to the complaint. 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 MCI's request to reverse the *Division Order*.

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 MCI on November 18, 2002, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Monica S. Desai, Chief
Consumer & Governmental Affairs Bureau

¹⁹ See *id.* at 3-4.

²⁰ See *id.* at 3.

²¹ See *Division Order* at 17 FCC Rcd 20402-03, para. 4.

²² See 47 C.F.R. § 64.1150(d).

²³ See 47 C.F.R. § 1.106(c).

²⁴ See *id.*