

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

In the Matter of	)	
	)	
U.S. Telecom Long Distance, Inc.	)	IC No. 03-S82813
	)	
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 U.S. Telecom Long Distance, Inc.<sup>1</sup> (U.S. Telecom) asking us to reverse a finding that U.S. Telecom changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.<sup>2</sup> On reconsideration, we affirm that U.S. Telecom's actions violated the Commission's carrier change rules.<sup>3</sup>

**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.<sup>4</sup> The rules were designed to take the profit out of slamming.<sup>5</sup> The Commission applied the rules to all wireline carriers,<sup>6</sup> and modified its existing requirements for the authorization and verification of preferred carrier changes.<sup>7</sup>

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

<sup>1</sup> See Petition for Reconsideration of U.S. Telecom Long Distance, Inc. (filed August 4, 2003) (*Petition*) seeking reconsideration of *U.S. Telecom Long Distance, Inc.*, 18 FCC Rcd 14572 (2003) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

<sup>2</sup> See *Division Order*, 18 FCC Rcd 14572 (2003).

<sup>3</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

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

<sup>5</sup> 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.

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

<sup>7</sup> See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

carrier change may occur.<sup>8</sup> 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.<sup>9</sup>

4. The Commission also adopted liability rules for carriers that engage in slamming.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

5. The Commission received a complaint on March 4, 2003, alleging that Complainant's telecommunications service provider had been changed from VarTec to U.S. Telecom without Complainant's authorization.<sup>13</sup> Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>14</sup> the Division notified U.S. Telecom of the complaint.<sup>15</sup> In response, U.S. Telecom stated that the authorization was received and confirmed through third party verification.<sup>16</sup> In the *Division Order*, the Division found that U.S. Telecom's sales representative failed to drop off the line once the three-way connection was established with the third-party verification company, as required by the Commission's rules,<sup>17</sup> and therefore that U.S. Telecom's actions resulted in an unauthorized change in Complainant's telecommunications service provider.<sup>18</sup> U.S. Telecom seeks reconsideration of the *Division Order*.

## II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny the *Petition*. In the

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<sup>8</sup> 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).

<sup>9</sup> 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.

<sup>10</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>11</sup> 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).

<sup>12</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>13</sup> Informal Complaint No. IC 03-S82813, filed March 4, 2003.

<sup>14</sup> 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).

<sup>15</sup> See Notice of Informal Complaint No. IC 03-S82813, to U.S. Telecom from the Deputy Chief, Division, CGB, dated May 25, 2005.

<sup>16</sup> U.S. Telecom's Response to Informal Complaint No. IC 03-S82813, received June 18, 2003.

<sup>17</sup> See 47 C.F.R. § 64.1120(c)(3)(ii).

<sup>18</sup> See 47 C.F.R. § 64.1150(d).

*Petition*, U.S. Telecom argues that the sales representative did, in fact, drop off the line once the three-way connection was established with the third-party verification company, and that there is no evidence suggesting otherwise.<sup>19</sup> Upon further review of U.S. Telecom's verification recording, it remains unclear whether the sales representative did or did not drop off the line once the conversation between the third-party verifier and the consumer commenced. When the third-party verifier asked the consumer to identify the current long distance carrier, a voice other than the consumer was overheard on the recording. The identity of the other voice is unclear. Thus, we cannot determine whether or not the sales representative dropped off the line.

7. Upon further review of the verification recording, however, we find that U.S. Telecom did violate Section 64.1120(b) of the Commission's carrier change rules, which requires that, during a third-party verification, the verifier obtain a separate authorization for each service sold (*e.g.*, local, intraLATA, interLATA).<sup>20</sup> The recording clearly indicates that the third-party verifier confirmed "international, state-to-state, inter and intraLATA long distance calls" without obtaining separate authorization for each of these services.<sup>21</sup> Consequently, we deny U.S. Telecom'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 U.S. Telecom Long Distance, Inc. on August 4, 2003, 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

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<sup>19</sup> See *Petition* at 1.

<sup>20</sup> See 47 C.F.R. § 64.1120(b). Although "[t]he separate authorization and verification may be received and conducted during the same telemarketing solicitation ...[,] the carrier must obtain separate authorization for each service." *Section 258 Order* at 14 FCC Rcd 1558, para. 82.

<sup>21</sup> The telephone bill submitted with the complaint shows that more than one service was established.