

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

In the Matter of)	
)	
UMCC Holdings)	IC Nos. 07-S0272594
)	07-S0272597
Complaints Regarding)	07-S0273675
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	
)	

ORDER

Adopted: July 12, 2007

Released: July 16, 2007

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

1. In this Order, we consider complaints¹ alleging that UMCC Holdings (UMCC)² changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainant in violation of the Commission's rules.³ We conclude that UMCC's actions did result in unauthorized changes in Complainants' telecommunications service providers and we grant Complainants' complaints.

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).⁴ Section 258 prohibits the practice of

¹ See Appendix A.

² These complaints were originally filed against Buzz Telecom, Inc. (Buzz). Buzz has sold all company assets, including trade names, and conveyed all rights to serve and bill Buzz customers to UMCC Holdings, Inc.

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ 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 10997 (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

"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.⁵ 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.⁶ 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.⁷ 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.⁸

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.⁹ 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.¹⁰ 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.¹¹

4. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed from their authorized carriers to UMCC

F.C.C.2d 503 (1985).

⁵ 47 U.S.C. § 258(a).

⁶ See 47 C.F.R. § 64.1120.

⁷ 47 U.S.C. § 258(a).

⁸ 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.

⁹ 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.*

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1170.

¹¹ See 47 U.S.C. § 503.

without Complainants' authorization.¹² UMCC states that Complainants' accounts were transferred via an asset acquisition of customers from Buzz Telecom. 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 Pursuant to sections 1.719 and 64.1150 of our rules,¹⁵ we notified UMCC of the complaints and UMCC responded.¹⁶ UMCC, however, failed to file such letter with the Commission. We find that UMCC has failed to produce clear and convincing evidence that Complainants authorized carrier changes.¹⁷ Therefore, we find that UMCC's actions resulted in unauthorized changes in Complainants' telecommunications service provider and we discuss UMCC's liability below.¹⁸

5. UMCC has removed all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁹ We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainants authorized carrier nor UMCC may pursue any collection against Complainants for those charges.²⁰ Any charges imposed by UMCC on the subscribers for service provided after this 30-day period shall be paid by the subscribers to the authorized carrier at the rates the subscribers were paying to the authorized carriers at the time of unauthorized change of telecommunications service provider.²¹

¹² See Appendix A.

¹³ See 47 C.F.R. § 64.1120(e).

¹⁴ See 47 C.F.R. § 64.1120(e)(1).

¹⁵ 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).

¹⁶ See Appendix A.

¹⁷ See 47 C.F.R. § 64.1150(d).

¹⁸ If any Complainant is unsatisfied with the resolution of this complaint, each 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 Complainants' informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to each Complainant. See 47 C.F.R. § 1.719.

¹⁹ See 47 C.F.R. § 64.1160(b).

²⁰ See 47 C.F.R. § 64.1160(d).

²¹ See 47 C.F.R. §§ 64.1140, 64.1160.

6. 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 UMCC ARE GRANTED.

7. 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 change occurred and UMCC may not pursue any collection against Complainants for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson
Consumer Policy Division
Consumer & Governmental Affairs Bureau

APPENDIX A

<u>INFORMAL COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF RESPONSE</u>	<u>AUTHORIZED CARRIER</u>
07-S0272594	February 26, 2007	June 11, 2007	None
07-S0272597	February 20, 2007	June 11, 2007	None
07-S0273675	April 16, 2007	June 11, 2007	Embarq