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

In the Matter of	)	
	)	
American Telecommunications Systems, Inc.	)	IC No. 07-S001629
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: July 26, 2007 **Released: July 30, 2007**

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

1. In this Order, we consider the complaint filed by Complainant[1] alleging that American Telecommunications Systems, Inc. (ATS) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.[2] We conclude that ATS's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

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).[3] Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

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[1] Informal Complaint No. IC 07-S001629, filed June 1, 2007.

[2] *See* 47 C.F.R. §§ 64.1100 – 64.1190.

[3] 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 WorATSom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted, MCI WorATSom 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) (Third Order on Reconsideration); Order, FCC 03-116, (rel. May 23, 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 Carrier*s, 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 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.[4] 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.[5] 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.[6] 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.[7]

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.[8] 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.[9] 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.[10]

4. We received Complainant's complaint on June 1, 2007, alleging that Complainant's telecommunications service provider had been changed to ATS without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,[11] we notified

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[4] 47 U.S.C. § 258(a).

[5] *See* 47 C.F.R. § 64.1120.

[6] 47 U.S.C. § 258(a).

[7] *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.

[8] *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.*

[9] *See* 47 C.F.R. §§ 64.1140, 64.1170.

[10] *See* 47 U.S.C. § 503.

[11] 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).

ATS of the complaint and ATS responded on June 28, 2007.[12] ATS states that authorization was received and confirmed through third party verification (TPV). Our rules allow a sales representative to remain on the line during a verification if the carrier has certified it technically is incapable of dropping off;[13] however, final verification can only be validly obtained after a sales agent has finished providing information.[14] In this case the verifier did not elicit the identity of the subscriber after the sales agent has finished providing information.[15] We find that ATS has failed to produce clear and convincing evidence of a valid authorized carrier change by Complainant.[16] Therefore, we find that ATS's actions did result in an unauthorized change in Complainant's telecommunications service and we discuss ATS's liability below.[17]

5. Pursuant to Section 64.1170(b) our rules, ATS must forward to Verizon an amount equal to 150% of all charges paid by the subscriber to ATS along with copies of any telephone bills issued from ATS to the Complainant.[18] Within ten days of receipt of this amount, Verizon shall provide a refund or credit to Complainant in the amount of 50% of all charges paid by Complainant to ATS. Complainant has the option of asking Verizon to re-rate ATS charges based on Verizon rates and, on behalf of Complainant, seek from ATS, any re-rated amount exceeding 50% of all charges paid by Complainant to ATS. Verizon must also send a notice to the Commission, referencing this Order, stating that is has given a refund or credit to Complainant.[19] If Verizon has not received the reimbursement required from ATS within 45 days of the release of this Order, Verizon must notify the Commission and Complainant accordingly. Verizon also must notify the Complainant of his or her right to pursue a claim against ATS for a refund of all charges paid to ATS.[20]

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 complaint filed by Complainant against American Telecommunications Systems, Inc. IS GRANTED.

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[12] ATS Response to Informal Complaint No. 07-S001629, received June 28, 2007.

[13] ATS has so certified. *See* ATS letter filed in Docket 94-129, dated August 17, 2006.

[14] *See* Third Order on Reconsideration, 18 FCC Rcd 5099, 5117 at para. 47.

[15] *See* 47 C.F.R. § 64.1120(c)(3)(iii).

[16] *See* 47 C.F.R. § 64.1150(d).

[17] If Complainant is unsatisfied with the resolution of this complaint, 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 such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See* 47 C.F.R. § 1.719.

[18] See 47 C.F.R § 64.1170(b)(1)(2).

[19] *See* 47 C.F.R. § 64.1170(c).

[20] *See* 47 C.F.R. § 64.1170(e).

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(b) of the Commission's rules, 47 C.F.R. § 64.1170(b), that ATS must forward to Verizon an amount equal to 150% of all charges paid by the subscriber along with copies of any telephone bills issued from the company to the Complainant within ten (10) days of the release of this order.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
Consumer Policy Division
Consumer & Governmental Affairs Bureau