

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

In the Matter of)	
)	
Verizon Long Distance)	IC No. 04-S86027
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Verizon Long Distance (Verizon)¹ asking us to reverse a finding that Verizon 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 Verizon'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 *Verizon Long Distance* (filed Feb. 25, 2005) (*Petition*) seeking reconsideration of *Verizon Long Distance*, 20 FCC Rcd 1458 (2005) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See *Division Order*, 20 FCC Rcd 1458 (2005).

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 to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on January 23, 2004, alleging that Complainant's telecommunications service provider had been changed from AT&T Corporation to Verizon without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ the Division notified Verizon of the complaint.¹⁵ In its response, Verizon stated that authorization was received and confirmed through a third party verification (TPV).¹⁶ The Division found that Verizon's TPV required the subscriber to provide authorization by pressing digits on the subscriber's telephone in response to verification questions. The *Division Order* pointed out that the Commission's TPV rules require carriers to obtain oral authorization¹⁷ and, therefore, that Verizon's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁸ Verizon seeks reconsideration of the *Division Order*.

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 04-S86027, filed January 23, 2004.

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 Informal Complaint No. IC 04-S86027 to Verizon from the Acting Deputy Chief, Division, CGB, dated February 13, 2004.

¹⁶ Verizon's Response to Informal Complaint No. IC 04-S86027, received March 18, 2004.

¹⁷ See 47 C.F.R. § 64.1120(c).

¹⁸ See *Division Order*, 20 FCC Rcd 1458 (2005); see also 47 C.F.R. § 64.1150(d).

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny Verizon's *Petition*. In the *Petition*, Verizon contends its automated TPV system complies with the Commission's rules.¹⁹ According to Verizon, the Commission's rules do not require that an automated TPV system obtain "oral authorization" but, rather, only that verification systems conform with the requirements set forth in Sections 64.1120(c)(3)(ii) through (c)(3)(iv) of the Commission's rules.²⁰ Verizon thus maintains that the plain terms of these rules do not require that automated third party verification systems record oral responses to the entire verification process. According to Verizon, the reference to "oral authorization" appears in Section 64.1120(c)(3) and not in subsection 64.1120(c)(3)(i), which deals with automated TPV systems.²¹ Verizon concludes that its TPV system at issue fully complies with Commission requirements by including an oral authorization "component."²²

7. We disagree. To accept Verizon's arguments would be to ignore the clear "oral authorization" requirement of Section 64.1120(c), which provides:

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures: ... (3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's *oral authorization* to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number).²³ (*emphasis added*)

8. Verizon's arguments are inconsistent with a clear, unambiguous reading of the rules. Simply put, we conclude that a TPV recording must comport with the requirement that the subscriber's oral authorization for a carrier change be obtained. In the *Third Report and Order*, the Commission permitted the use of automated systems, but did not exempt automated systems from the oral authorization requirement.²⁴ Therefore, we affirm that Verizon's failure to obtain an oral authorization

¹⁹ See *Petition* at 2.

²⁰ Verizon contends that the Commission's rules specifically provide that "[a]utomated third party verification systems and three-way conference calls *may be used* for verification purposes *so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.*" *Petition* at 2. (Emphasis added by Verizon.)

²¹ *Petition* at 2. Verizon also alleges that its reading is consistent with the *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 Report and Order and Second Order on Reconsideration*, 15 FCC Rcd 15996 (2000) (*Third Report and Order*), referencing paragraphs 43 and 44 of that *Report*. See 15 FCC Rcd at 16017-18.

²² *Petition* at 4-5. Verizon states that, while the transcript of the automated recording, attached to the *Petition*, does not indicate which digit was entered by Complainant, the prompting of each new question in the transcript shows that Complainant's response to the previous question confirmed Complainant's intent to authorize changes in service providers. According to Verizon, if Complainant indicated a contrary intent, the system would have aborted the automated TPV session, but it did not. Verizon also notes that the automated TPV system recorded Complainant's name as well as Complainant's month and date of birth. *Petition* at 5, n.6.

²³ 47 C.F.R. § 64.1120(c).

²⁴ In the *Third Report and Order*, the Commission discussed the operation of automated systems and observed that, after the carrier's sales representative sets up a three-way call among the subscriber, the carrier, and the automated verification recording system, the automated system plays recorded questions and records the subscriber's answers to those questions. 15 FCC Rcd at 16017, n.125.

via its automated system resulted in an unauthorized change in Complainant's telecommunications service provider. Accordingly, we deny Verizon's *Petition*.

III. ORDERING CLAUSES

9. 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 Verizon on February 25, 2005, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau