

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

In the Matter of)	
)	
Long Distance Consolidated Billing Co.)	IC No. 07-F0280397S
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: August 7, 2008

Released: August 7, 2008

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Long Distance Consolidated Billing Co. (LDCB) asking us to reverse a finding that LDCB changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.¹ On reconsideration, we affirm that LDCB's actions violated the Commission's carrier change rules.²

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.³ The rules were designed to take the profit out of slamming.⁴ The Commission applied the rules to all wireline carriers,⁵ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶

¹ See Petition for Reconsideration of Long Distance Consolidated Billing Co. (filed February 29, 2008) (*Petition*), seeking reconsideration of *Long Distance Consolidated Billing Co.*, 23 FCC Rcd 1032 (2008) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ See *id.*; see also 47 U.S.C. § 258(a).

⁴ 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.

⁵ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.*

⁶ See *id.* at 1549, para. 66.

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁷ 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.⁸

4. The Commission also adopted liability rules for carriers that engage in slamming.⁹ 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.¹⁰ 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.¹¹

5. The Commission received a complaint on July 23, 2007, alleging that Complainant's telecommunications service provider had been changed from AT&T Corporation to LDCB without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified LDCB of the complaint.¹⁴ In its response, LDCB stated that authorization was received and confirmed through third party verification (TPV).¹⁵ The Division stated that, although Complainant agreed to switch intraLATA service, the definition of intraLATA service given by the verifier was not correct.¹⁶ Therefore, the Division found that, because of the incorrect definition, LDCB's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ LDCB seeks reconsideration of the *Division Order*.

⁷ 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).

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, 64.1160-70.

¹⁰ 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).

¹¹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹² Informal Complaint No. IC 07-F0280397S, filed July 23, 2007.

¹³ 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).

¹⁴ See Notice of Informal Complaint No. IC 07-F0280397S to LDCB from the Deputy Chief, Division, CGB, dated August 2, 2007.

¹⁵ LDCB's Response to Informal Complaint No. IC 07-F0280397S, received August 22, 2007.

¹⁶ See *Division Order* at 23 FCC Rcd 1034 n.13: "The verifier defined intraLATA as instate long distance service. This definition, however, is too broad because instate long distance also includes instate interLATA service." We note that LATA is an acronym for "local access and transport area."

¹⁷ See *Division Order*, 23 FCC Rcd 1032 (2007); see also 47 C.F.R. § 64.1150(d).

II. DISCUSSION

6. Based on the record before us, we affirm our conclusion in the *Division Order* that LDCB violated our carrier change rules and deny LDCB's *Petition*. The Commission's rules require both that the subscriber authorizes the change in service and that the telecommunications carrier, through its third party verifier in this situation, obtains separate authorization for each type of service it seeks to provide to the subscriber.¹⁸ We find that LDCB's verifier provided erroneous information when describing the types of services LDCB would provide to Complainant if he or she switched to LDCB. Specifically, LDCB inaccurately defined "intraLATA" toll service such that it included not only intraLATA calls but also interLATA calls. Thus, the subscriber could not effectively authorize the change in intraLATA service.¹⁹ Moreover, by including both intraLATA and interLATA calls within the single question "d.", we find that LDCB failed to obtain separate authorization for each type of service it sought to provide to Complainant.²⁰

7. The underlying purpose of the Commission's slamming rules is to ensure that consumers have sufficient information about telecommunications services and providers of such services to make informed decisions when changing those services and providers.²¹ Sufficient information necessarily includes accurate information.²² LDCB's TPV questions did not provide sufficient information for Complainant to make an informed change of intraLATA service because the definition of intraLATA toll service was inaccurate and confusing. Specifically, LDCB defined intraLATA toll calls as "long distance calls made within the state."²³ This definition is inaccurate because in Missouri, the state in which the services at issue were received, long distance calls made within the state can also be interLATA calls.²⁴ Therefore,

¹⁸ See 47 CFR §§ 64.1120(a)(1)(i) and (b).

¹⁹ Specifically, the verifier states:

1. Is it your intention to change your long distance service provider to Long Distance Consolidated Billing Co.?
 - a. Do you understand that this includes intrastate, or calls made within the state? Correct?
 - b. This includes interstate, or calls made out of state? Correct?
 - c. This includes international calls? Correct?
 - d. This includes intraLATA toll calls, or long distance calls made within the state? Correct?

See *Petition* at 3-4.

²⁰ See 47 CFR § 64.1120(b).

²¹ See *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9564 at para. 9 (1995).

²² See *id.* at 9568, para. 15 (In explaining why the Commission's new slamming rules do not violate the First Amendment, the Commission stated that the rules "require that the carriers' [speech used to switch consumers] not confuse or mislead the consumer.").

²³ See *Petition* at 4.

²⁴ See *Division Order* at 23 FCC Rcd 1034 n.13. In Missouri, the state in which Complainant receives the services at issue, there are four LATAs, and, thus, Complainant could make long distance calls within the state that are interLATA calls.

because of the inaccurate and confusing language in the TPV,²⁵ Complainant cannot be deemed to have authorized the change of intraLATA service.

8. Moreover, LDCB also violated section 64.1120(b) of the Commission's rules. That provision requires telecommunications carriers offering more than one type of telecommunications service to "obtain separate authorization from the subscriber for each service sold."²⁶ As explained above, LDCB included within its description of intraLATA toll service both intraLATA toll and interLATA toll services. Therefore, question "d" sought to obtain the subscriber's authorization for a switch both in the subscriber's intraLATA toll and interLATA toll services. As such, LDCB did not obtain a separate authorization for intraLATA service in violation of section 64.1120(b) of the Commission's rules.

9. Consequently, we reject LDCB's reliance on the Commission's use of a virgule separating the terms "intraLATA" and "intrastate" in the pre-amended section 64.1120(b)²⁷ as evidence that the Commission always equates "intraLATA" with "intrastate." As discussed above, many states have more than one LATA. Indeed, as also explained above, Complainant receives intraLATA service in Missouri, a state in which there are four LATAs. Accordingly, *intrastate* calls made between two LATAs in the same state are interLATA calls as defined by the Act, which specifies that an interLATA call is "telecommunications between a point located in a local access and transport area and a point located outside such area."²⁸ In addition, as the Commission has noted, "... there are several LATAs that cover portions of more than one state, such that an *interstate* call is intraLATA."²⁹ Consequently, "intrastate" in either of these two situations cannot be synonymous with "intraLATA."

²⁵ We note that question "a." adds to the confusion because it also asks the consumer about the intent to switch his or her intrastate service.

²⁶ 47 C.F.R. § 64.1120(b).

²⁷ *See id.* 47 C.F.R. § 64.1120(b) in relevant part previously provided:

Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold.

The current 47 C.F.R. § 64.1120(b) in relevant part provides:

Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA toll, and interLATA toll), that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be obtained within the same solicitation.

The effective date of the amended 47 C.F.R. § 64.1120(b) was July, 30, 2008. *See* 73 Fed. Reg. 44170 (2008) (announcing the effective date of *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*, Fourth Report and Order, 23 FCC Rcd 493 (2008) (*Fourth Report and Order*)).

²⁸ 47 U.S.C. § 153(21). We note that the pre-amended section 64.1120(b) also separated the words "interLATA" and "interstate" with a virgule. Under LDCB's interpretation of the virgule, therefore, these latter two terms are also equivalent. As interLATA calls between LATAs within a state with more than one LATA are intrastate, such an interpretation is inconsistent with the statutory definition of interLATA service. 47 U.S.C. § 153(21).

²⁹ *See Fourth Report and Order*, 23 FCC Rcd at 504, para. 25 n.72. (emphasis added) The Commission has long recognized that intraLATA service has an interstate component. *See e.g., In The Matter Of Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, 14 FCC Rcd 14221, 14244-14251 at paras. 45-57 (1999) (removing interstate intraLATA service from price cap regulation).

10. Thus, contrary to LDCB's assertion that the Division based its decision on an amended section of Section 64.1120(b) that was not in effect at the time of the alleged unauthorized switch,³⁰ we conclude that LDCB's actions under both the existing and amended rules violated the Commission's carrier change rules. The Commission did not, as LDCB suggests, change a rule which "in effect permitted [intraLATA and intrastate] to be used synonymously."³¹

11. In sum, we agree with the Division that LDCB's definition of intraLATA service was flawed and find incorrect LDCB's arguments that the Division relied on a rule amendment not yet in effect or that section 64.1120(b) prior to the amendment equated "intraLATA" with "intrastate." Thus, we affirm our conclusion in the *Division Order* that LDCB violated the Commission's carrier change rules and deny the *Petition*.

III. ORDERING CLAUSES

12. 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 Long Distance Consolidated Billing Co. on February 29, 2008, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

³⁰ See *Petition* at 2-3.

³¹ See *id.* at 3. Although the Commission did note that it was accurate in some cases to treat the terms as synonyms, such cases do not include states with more than one LATA such as Complainant's state. See *Fourth Report and Order* at 504, para. 25 n.72 ("Though it could be accurate in some cases to treat the terms as synonyms, there are numerous states that have multiple LATAs within them, such that an intrastate call is interLATA.").