

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

| | | |
|---|---|---------------------|
| In the Matter of |) | |
| |) | |
| Long Distance Consolidated Billing Co. |) | IC Nos. 08-S0293348 |
| |) | 08-S0293770 |
| Complaints Regarding |) | 08-S0293814 |
| Unauthorized Change of |) | |
| Subscriber's Telecommunications Carrier |) | |

ORDER

Adopted: August 27, 2008

Released: August 29, 2008

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

1. In this Order, we consider the complaints¹ alleging that Long Distance Consolidated Billing Co. (LDCB) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that LDCB'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).³ Section 258 prohibits 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 In the *Section 258 Order*,

¹ See Appendix A.

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

⁴ 47 U.S.C. § 258(a).

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 Complainants' complaints alleging that Complainants' telecommunications service providers had been changed to LDCB without Complainants' authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of our rules,¹² we notified LDCB of the complaints and LDCB responded.¹³ In its responses, LDCB stated that authorization was received and confirmed through third party verifications (TPVs). We have reviewed the TPVs

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 See Appendix A.

¹² 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).

¹³ See Appendix A.

LDCB filed with its responses. Although Complainants agreed to switch intraLATA service, the definition of intraLATA service given by the verifiers was not correct.¹⁴ Therefore, because of the incorrect definition, LDCB's actions resulted in unauthorized changes in Complainants' telecommunications service providers.¹⁵

5. 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.¹⁶ We find that in each case, 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, in each case, the subscriber could not effectively authorize the change in intraLATA service.¹⁷ Moreover, by including both intraLATA and inter LATA calls within the single question "d.", we find that LDCB failed to obtain separate authorization for each type service it sought to provide to Complainants.¹⁸

6. 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.¹⁹ Sufficient information necessarily includes accurate information.²⁰ In each case, LDCB's TPV questions did not provide sufficient information for Complainants to make an informed change of intraLATA service because the definition of intraLATA toll service was inaccurate and

¹⁴ In each case, 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."

¹⁵ See 47 C.F.R. § 64.1150(d).

¹⁶ See 47 CFR §§ 64.1120(a)(1)(i) and (b).

¹⁷ 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?

¹⁸ See 47 CFR § 64.1120(b).

¹⁹ See *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 10 FCC Rcd 9560, 9564 at para. 9 (1995).

²⁰ See *id.* at 9586, 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.").

confusing. Specifically, in each case, LDCB defined intraLATA toll calls as “long distance calls made within the state.” This definition is inaccurate because in the states in which the services at issue were received, long distance calls made within each state can also be interLATA calls.²¹ Therefore because of the inaccurate and confusing language in the TPVs, Complainants’ cannot be deemed to have authorized the change of intraLATA service.

7. Moreover, in each case, 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.”²² 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.

8. Based on the foregoing, we find that LDCB has failed to produce clear and convincing evidence of valid authorized changes by Complainants. Therefore, we find that LDCB’s actions resulted in unauthorized changes in Complainants’ telecommunications service, and we discuss LDCB’s liability below.²³

9. LDCB must secure the removal of 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.²⁴ 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 LDCB nor the authorized carriers may pursue any collection against Complainants for those charges.²⁵ Any charges imposed by the authorized carriers on the subscribers for service provided after this 30-day period shall be paid by the subscribers at the rates the subscribers were paying to LDCB at the time of unauthorized change of telecommunications service provider.²⁶

²¹ In each case, the state in which each Complainant receives the services at issue compromise more than one LATA and, thus, each Complainant could make long distance calls within his or her state that are interLATA calls.

²² 47 C.F.R. § 64.1120(b).

²³ If a Complainant is unsatisfied with the resolution of this complaint, such 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 such Complainant. *See* 47 C.F.R. § 1.719.

²⁴ *See* 47 C.F.R. § 64.1160(b).

²⁵ *See* 47 C.F.R. § 64.1160(d).

²⁶ *See* 47 C.F.R. §§ 64.1140, 64.1160.

10. 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 Long Distance Consolidated Billing Co. ARE GRANTED.

11. 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 neither the LDCB nor the authorized carriers may pursue any collection against Complainants for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief
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> |
|--|------------------------------|-----------------------------|-------------------------------|
| 08-S0293348 | April 16, 2008 | April 30, 2008 | Verizon and AT&T |
| 08-S0293770 | June 17, 2008 | July 2, 2008 | Sprint |
| 08-S0293814 | June 23, 2008 | July 3, 2008 | AT&T, Inc. |