

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

In the Matter of)	
)	
New Century Telecom, Inc.)	IC No. 08-S002066
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: December 19, 2008

Released: December 23, 2008

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

1. In this Order, we consider the complaint¹ alleging that New Century Telecom, Inc. (NCT) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that NCT's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant 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

¹ Informal Complaint No. IC 08-S002066, filed June 19, 2008.

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).

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 19, 2008, alleging that Complainant's telecommunications service provider had been changed from its authorized carrier to Global Crossing Telecommunications, Inc. (Global) without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we notified Global of the complaint and

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).

Global responded on July 17, 2008.¹² Global states that the change in the Complainant's service was initiated by its reseller, NOS Communications (NOS). Pursuant to Sections 1.719 and 64.1150 of our rules,¹³ we notified NOS of the complaint. ANI Networks responded on behalf of NOS on August 26, 2008.¹⁴ Pursuant to Sections 1.719 and 64.1150 of our rules,¹⁵ we served Quasar based on ANI's response. Quasar responded on October 17, 2008.¹⁶ Pursuant to Sections 1.719 and 64.1150 of our rules,¹⁷ we served NCT, based on Quasar's response. NCT has failed to respond to the complaint.¹⁸ The failure of NCT to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation.¹⁹ Therefore, we find that NCT's actions resulted in an unauthorized change in Complainant's telecommunications service provider and we discuss NCT's liability below.²⁰ We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

5. NCT must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change.²¹ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither their authorized carrier nor NCT may pursue any collection against Complainant for those charges.²²

¹² Global's Response to Informal Complaint No. IC 08-S002066, received July 17, 2008.

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 ANI Network on behalf of NOS Communications's response to Informal Complaint No. 08-S002066, received August 26, 2008.

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 Quasar's Response to Informal Complaint No. IC 08-S002066, received October 17, 2008.

¹⁷ 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).

¹⁸ Notice of Informal Complaint No. IC 08-S002066 was mailed on October 17, 2008. On November 4, 2008 the Commission received the certified mail return receipt confirming delivery.

¹⁹ *See* 47 C.F.R. § 64.1150(d).

²⁰ 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 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.

²¹ *See* 47 C.F.R. § 64.1160(b).

²² *See* 47 C.F.R. § 64.1160(d).

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 New Century Telecom, Inc. IS 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), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred to the Complainant and neither their authorized carrier nor New Century Telecom, Inc. may pursue any collection against Complainant for those charges.

8. 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