

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

In the Matter of )  
 )  
Mediacom ) IC No. 08-S0294769  
 )  
Complaint Regarding )  
Unauthorized Change of )  
Subscriber's Telecommunications Carrier )

**ORDER ON RECONSIDERATION**

**Adopted: May 18, 2009**

**Released: May 19, 2009**

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we grant a petition filed by MCC Telephony of Illinois, LLC (Mediacom), a subsidiary of Mediacom Communications Corporation asking us to reconsider a finding that Mediacom changed the Complainant's telecommunications service provider in violation of the Commission's rules.<sup>1</sup> On reconsideration, we find that Mediacom's actions did not violate the Commission's carrier change rules.<sup>2</sup> We therefore grant Mediacom's *Petition* and deny the complaint.

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

3. The rules require that a submitting carrier receive individual subscriber consent before a

<sup>1</sup> See Petition for Reconsideration of MCC Telephony of Illinois, LLC, a subsidiary of Mediacom Communications Corporation (filed April 10, 2009) (*Petition*) seeking reconsideration of *Mediacom*, 24 FCC Rcd 3755 (2009) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). The caption of the *Division Order* listed "Mediacom" and the *Petition* caption lists "MCC Telephony of Illinois, LLC."

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

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

<sup>4</sup> 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.

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

<sup>6</sup> See *id.* at 1549, para. 66.

carrier change may occur.<sup>7</sup> 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.<sup>8</sup>

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

5. The Commission received a complaint on November 6, 2008, alleging that Complainant's telecommunications service provider had been changed from Verizon to Mediacom without Complainant's authorization.<sup>12</sup> Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>13</sup> the Division notified Mediacom of the complaint.<sup>14</sup> The Division found that Mediacom failed to respond to the complaint.<sup>15</sup> The Division stated that the failure of Mediacom to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation and, therefore, that Mediacom's actions resulted in an unauthorized change in Complainant's telecommunications service provider.<sup>16</sup> Mediacom seeks reconsideration of the *Division Order*.

## II. DISCUSSION

6. Based on the record before us, we reverse the *Division Order* and grant the *Petition*. As discussed below, Mediacom did not violate the Commission's carrier change rules.

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<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>10</sup> 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).

<sup>11</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>12</sup> Informal Complaint No. IC 08-S0294769, filed November 6, 2008.

<sup>13</sup> 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).

<sup>14</sup> Notice of Informal Complaint No. IC 08-S0294769 to Mediacom from the Deputy Chief, Division, dated November 20, 2008.

<sup>15</sup> See *Division Order*, 24 FCC Rcd 3755 (2009).

<sup>16</sup> See *id.*; see also 47 C.F.R. § 64.1150(d).

7. Mediacom is a provider of internet access and IP-enabled voice services.<sup>17</sup> In the instant case, the service in question was voice over internet protocol (VoIP). The Commission's carrier change rules have not been extended to VoIP.<sup>18</sup> Therefore, we reverse the *Division Order* and grant the *Petition*.<sup>19</sup>

### III. ORDERING CLAUSES

8. 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 filed by MCC Telephony of Illinois, LLC (Mediacom), a subsidiary of Mediacom Communications Corporation, on April 10, 2009, IS GRANTED and the complaint filed against Mediacom on November 6, 2008, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief  
Consumer & Governmental Affairs Bureau

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<sup>17</sup> See *Petition* at 1.

<sup>18</sup> See generally 47 C.F.R. §§ 64.1100(b),(d). We note that the Commission has sought comment on whether it is necessary to extend slamming regulations to VoIP or other IP-enabled service providers. See *Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4910-11, paras. 71-72 (2004).

<sup>19</sup> Commission records show that Mediacom did respond to the complaint; however, the response was sent to the wrong division within the Bureau, and contained an incorrect file number. As a result, the Division was not aware of the response when it issued the *Division Order*.