

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

In the Matter of)
Silv Communications) IC No. 09-S0295665
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: July 28, 2009

Released: July 31, 2009

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

1. In this Order, we consider the complaint¹ alleging that Silv Communications (Silv) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Silv's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's 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 09-S0295665, filed April 17, 2009.

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 April 17, 2009, alleging that Complainant's telecommunications service provider had been changed from Qwest to Silv without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we

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).

notified Silv of the complaint and Silv responded on May 27, 2009.¹² Silv states that authorization was received through a third party verification (TPV). We have reviewed the TPV. Section 258(a) of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996¹³ provides that, “[n]o telecommunications carrier shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service *except in accordance with such verification procedures s the Commission shall prescribe* (emphasis added).¹⁴ Section 64.1120(c)(3)(iii) of the Commission’s rules specifically requires that all third party verifiers “elicit, at a minimum the identity of the subscriber, [and] confirmation that the person on the call is authorized to make the *carrier change...*” (emphasis added). Silv did not satisfy this procedural requirement when in each case, its verifier asked whether the person on the call was “authorized to make changes and/or incur charges for that account.”¹⁵ The verifier asked, “Are you 18 years of age and authorized by the telephone account owner to make changes to and/or incur charges on this telephone account?” A “yes” response by the person on the call does not provide clear and convincing evidence confirming that such person was “authorized to make the carrier change” because the person on the call could have been confirming authorization only for incurring charges. The possibility of the person on the call only confirming authorization to incur charges would not meet the specific procedural requirement that the third party verifier “confirm that the person on the call is authorized to make the carrier change.”¹⁶ Accordingly we grant Complainants’ complaints.¹⁷

5. Pursuant to Section 64.1170(b) our rules, Silv must forward to Qwest an amount equal to 150% of all charges paid by the subscriber to Silv along with copies of any telephone bills issued from Silv to the Complainant.¹⁸ Within ten days of receipt of this amount, Qwest shall provide a refund or credit to Complainant in the amount of 50% of all charges paid by Complainant to Silv. Complainant has the option of asking Qwest to re-rate Silv’s charges based

¹² Silv Communication’s Response to Informal Complaint No. IC 09-S0295665, received May 27, 2009.

¹³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁴ See 47 U.S.C. § 258(a).

¹⁵ See *Reduced Rate Long Distance, LLC*, 24 FCC Rcd 2496 (2009). In that Order on Reconsideration, CGB upheld a *Division* order which state that a TPV which confirmed that the person on the call was authorized to make changes “and/or” incur charges did not satisfy the Commission’s explicit procedural requirement that the verification elicit a confirmation that the person on the call is authorized to make the carrier change.

¹⁶ See *id.*

¹⁷ 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.

¹⁸ See 47 C.F.R. § 64.1170(b)(1)(2).

on Qwest's rates and, on behalf of Complainant, seek from Silv any re-rated amount exceeding 50% of all charges paid by Complainant to Silv. Qwest must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to Complainant.¹⁹ If Qwest has not received the reimbursement required from Silv within 45 days of the release of this Order, Qwest must notify the Commission and Complainant accordingly. Qwest also must notify the Complainant of his or her right to pursue a claim against Silv for a refund of all charges paid to Silv.²⁰

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 Silv Communication IS GRANTED.

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 Qwest nor Silv may pursue any collection against Complainant for those charges.

7. 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

¹⁹ See 47 C.F.R. § 64.1170(c).

²⁰ See 47 C.F.R. § 64.1170(e).