

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

In the Matter of)	
)	
Reduced Rate Long Distance, LLC)	IC No. 08-S0291140
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: February 26, 2009

Released: February 26, 2009

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a Petition for Reconsideration filed by Reduced Rate Long Distance, LLC (RRLD) asking us to reverse a finding that RRLD changed the 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 RRLD'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

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

¹ See Petition for Reconsideration of Reduced Rate Long Distance, LLC (filed August 29, 2008) (*Petition*) seeking reconsideration of *Reduced Rate Long Distance*, 23 FCC Rcd 11492 (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 *Section 258 Order* at 1560-61, para. 85.

⁶ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

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 the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on February 6, 2008, alleging that Complainant's telecommunications service provider had been changed to RRLD without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified RRLD of the complaint.¹⁴ In its response, RRLD stated that authorization was received and confirmed through third party verification (TPV).¹⁵ The Division reviewed the TPV filed with RRLD's response and determined that RRLD's TPV was not intelligible.¹⁶ The Division, therefore, found that RRLD did not provide clear and convincing evidence of an authorized change in Complainant's telecommunications service provider.¹⁷ RRLD seeks reconsideration of the *Division Order* and requests that the Division's finding that an unauthorized carrier change occurred be vacated.¹⁸

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 08-S0291565, filed February 6, 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 See Notice of Informal Complaint No. IC 08-S0291565 to RRLD from the Deputy Chief, Division, CGB, dated February 25, 2008.

¹⁵ RRLD's Response to Informal Complaint No. IC-08-S0291565, received March 19, 2008.

¹⁶ See *Division Order* at 2. Our review of the original TPV indicates that the words spoken on the TPV could not be understood.

¹⁷ See 47 C.F.R. § 64.1150(d).

¹⁸ See *Petition* at 3 (citing *AT&T v. FCC*, 323 F.3d 1081 (D.C. Cir. 2003) (*AT&T*)). In its petition, RRLD asserts that, "[w]hile RRLD admits that the recording is not of the highest audibility quality, the recording is audible and does set forth the authorization language which comports with the express language" of Sections 64.1100(h) and

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny RRLD's *Petition*. We base our decision, however, on our conclusion that the TPV submitted with the *Petition* violated our carrier change rules.¹⁹ As discussed below, RRLD violated the Commission's carrier change rules because there was insufficient evidence that RRLD's verifier elicited a confirmation that the person on the TPV was authorized to make a carrier change.

7. We find that RRLD failed to satisfy one of the verification procedures set forth in the Commission's rules, as required by Section 258(a) of the Communications Act of 1934 (Act).²⁰ Specifically, Section 258(a) of the Act 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 as the Commission shall prescribe* (emphasis added).²¹ 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).²² In this case, while RRLD's third party verifier confirmed that the person on the TPV satisfied the definition of a "subscriber,"²³ the third party verifier failed to comply with the Commission's requirement that the person on the call also confirm that she is authorized to make the carrier change.²⁴ As the record shows, when the third party verifier asked the person on the call if she was "authorized to make changes and/or incur charges for that account," she responded "yes." 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.

8. We therefore disagree with RRLD's assertion that, because the third party verifier confirmed the person on the TPV satisfied the definition of "subscriber,"²⁵ it also satisfied the specific carrier change procedure to elicit confirmation that the person was authorized to make the carrier change.²⁶ Under RRLD's analysis, a third party verifier need only ask the person on the call if he/she

64.1120(a)(1)(i) of the Commission's rules. RRLD resubmitted the verification recording as part of its *Petition* along with a verification script.

¹⁹ See *Division Order*, 23 FCC Rcd at 11494.

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

²¹ See 47 U.S.C. § 258(a).

²² 47 C.F.R. § 64.1120(c)(3)(iii).

²³ The term "subscriber" is defined in Section 64.1100(h) of the Commission's rules as one of the following:

- (1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill;
- (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or
- (3) Any person contractually or otherwise lawfully authorized to represent such party.

²⁴ See 47 C.F.R. § 64.1120(c)(3)(iii).

²⁵ See *Petition* at 2-3.

²⁶ See 47 C.F.R. § 64.1120(c)(3)(iii).

were authorized to incur charges and not ask the separate, discrete question as to whether the person was authorized to make a carrier change as Section 64.1120(c)(3)(iii) requires.²⁷ 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.”²⁸ As noted above, however, Section 258(a) of the Act requires carriers to comply with all Commission verification procedures.²⁹ Accordingly, we deny RRLD’s *Petition*.

9. Although we deny RRLD’s petition on substantive grounds, we take this opportunity to make clear that we will strictly enforce the requirement that, once a carrier receives a complaint regarding an unauthorized carrier change, it must provide clear and convincing evidence of authorization of the carrier change within the required 30-day time frame.³⁰ In addition, in the slamming context, we will deny petitions for reconsideration that are based solely on new evidence that could have been presented during the established 30-day time frame. We believe strict enforcement of the filing time frame is necessary to promote the public’s interest in the quick resolution of these complaints.

III. ORDERING CLAUSES

9. 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 Reduced Rate Long Distance, LLC on August 29, 2008, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

²⁷ See 47 C.F.R. § 64.1120(c)(3)(iii).

²⁸ See *id.*

²⁹ See 47 U.S.C. § 258(a). RRLD cites to *AT&T* for the proposition that a Commission slamming Notice of Apparent Liability was vacated because the Commission acted outside its statutory authorization requirement. We find RRLD’s citation to that case misplaced. As explained below, RRLD violated the Commission’s rules and, therefore, the *Division Order* did comply with Section 258(a) of the Act.

³⁰ See 47 C.F.R. § 64.1150(d). See, e.g., Verizon, 22 FCC Rcd 1480 (2007).