

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

In the Matter of)	
)	
Reduced Rate Long Distance, LLC)	IC No. 08-S0291730
)	
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 11470 (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 25, 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 it was unclear from the verification whether the person on the call was authorized to make the carrier change. During the verification, the verifier asked, "[a]re you 18 years of age and duly authorized by the telephone account owner to make changes to and/or incur charges on this telephone account?..." The person answered, "yes." The Division stated that because the verifier used the term "and/or," the person on the call could have been responding "yes" to the question of being authorized to "incur charges" or to the question of being authorized to "make changes," or both. The Division found that RRLD did not provide clear and convincing evidence that it confirmed that the person on the call was authorized to make the carrier change and, therefore, RRLD's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁶ RRLD seeks reconsideration of the *Division Order* and states that the Division's finding that an unauthorized carrier change occurred should be

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-S0291730, filed February 25, 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-S0291730 to RRLD from the Deputy Chief, Division, CGB, dated March 3, 2008.

¹⁵ RRLD's Response to Informal Complaint No. IC-08-S0291760, received April 4, 2008.

¹⁶ See 47 C.F.R. § 64.1150(d).

vacated.¹⁷

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny RRLD's *Petition*. 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. Section 258(a) of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996¹⁸ 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).¹⁹ 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).²⁰ We disagree with RRLD's argument that, because the third party verifier confirmed the person on the TPV satisfied the definition of "subscriber,"²¹ it also satisfied the specific carrier change procedure to elicit confirmation that the person was authorized to make the carrier change.²² Specifically, we concur with the Division's finding that the TPV filed by RRLD did not satisfy this procedural requirement when the verifier asked whether the person on the call was "authorized to make changes and/or incur charges for that account."²³ 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. As noted above, Section 258(a) of the Act requires carriers to comply with *all* Commission verification procedures.²⁴ However, under RRLD's analysis, a third party verifier need only ask the person on the call if he/she were authorized to incur charges and not

¹⁷ See *Petition* at 3 (citing *AT&T v. FCC*, 323 F.3d 1081 (D.C. Cir. 2003) (*AT&T*)).

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

¹⁹ See 47 U.S.C. § 258(a).

²⁰ 47 C.F.R. § 64.1120(c)(3)(iii).

²¹ See *Petition* at 2-3. 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.

²² See 47 C.F.R. § 64.1120(c)(3)(iii).

²³ See *Division Order* at 2.

²⁴ 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.

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.²⁵ 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.”²⁶ Accordingly, we deny RRLD’s *Petition*.

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

²⁵ See 47 C.F.R. § 64.1120(c)(3)(iii).

²⁶ See *id.*