

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

In the Matter of)	
)	
Metropolitan Telecommunications)	IC No. 08-S0293544
)	
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 filed by Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (MetTel) asking us to reconsider a finding that MetTel 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 MetTel'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 Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications (filed September 23, 2008) seeking reconsideration of *Metropolitan Telecommunications*, 23 FCC Rcd 12966 (2008) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (Bureau).

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

5. The Commission received a complaint on May 2, 2008, alleging that Complainant's telecommunications service provider had been changed from Capital Telecommunications, Inc. (CTI Communications)¹² to MetTel without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ the Division notified MetTel of the complaint.¹⁵ In response, MetTel stated that it became the long distance service provider for Complainant on or about January 22, 2008, via purchasing the subscriber base of CTI Communications in January 2008.¹⁶ The Division determined that MetTel failed to file a letter notification with the Commission concerning the acquisition of the subscriber base (including a copy of the advance subscriber notice) and found, therefore, that MetTel's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ MetTel seeks reconsideration of the *Division Order*.

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 The *Division Order* stated that the complaint alleged a switch of Complainant's service from "Starvox" to MetTel. CTI Communications is a wholly-owned subsidiary of Starvox Communications, Inc.

¹³ Informal Complaint No. IC 08-S0293544, filed May 2, 2008.

¹⁴ 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).

¹⁵ Notice of Informal Complaint No. IC-08-S0293544 to Metropolitan Telecommunications from the Deputy Chief, Division, dated May 19, 2008.

¹⁶ Metropolitan Telecommunications' Response to Informal Complaint No. IC-08-S0293544, received June 18, 2008.

¹⁷ See *Order*, 23 FCC Rcd 12966 (2008); see also 47 C.F.R. §§ 64.1120(e)(1), 64.1150(d).

II. DISCUSSION

6. Based on the record before us, we deny MetTel's *Petition* because, as discussed below, MetTel's customer notification letter regarding the acquisition of Complainant's service under the Commission's carrier-to-carrier sale or transfer of subscriber bases did not comply with the Commission's rules.

7. Section 64.1120(e) of the Commission's rules allows a telecommunications provider to acquire all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification, provided that the acquiring carrier comply with the Commission's streamlined procedures.¹⁸ Under these procedures, the acquiring carrier must file with the Commission's Office of the Secretary (FCC/OS), no later than 30 days before the planned transfer, a letter notification in CC Docket 00-257 that meets the requirements listed in Section 64.1120(e)(1) of the Commission's rules, including proper customer notice.¹⁹ The Division indicated that MetTel failed to file such letter notification. In its *Petition*, MetTel contends that it did in fact file a letter notification meeting the requirements of Section 64.1120(e)(1).²⁰ MetTel states that attached to its *Petition* is a copy of the letter notification showing a date-stamp indicating that the letter was filed and accepted by the FCC/OS on December 3, 2007.²¹

8. Upon further review, we agree with MetTel that it filed a letter notification with the FCC/OS regarding acquisition of the subscriber base under the name "Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications."²² Nonetheless, we find that the letter notification filed by MetTel is deficient because the letter notification did not contain "the rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions."²³ The Commission, in the *Streamlining Order*, explained that the letter notification must contain "detailed information" as to the rates, terms and conditions of the services the acquiring carrier will provide.²⁴ Subsequently, the Commission explained that providing such detail in

¹⁸ See 47 C.F.R. § 64.1120(e).

¹⁹ See *2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129, 16 FCC Rcd 11218 (2001) (*Streamlining Order*), adopting 47 C.F.R. § 64.1120(e).

²⁰ See *Petition* at 1.

²¹ See *Petition* at 1, Exhibit 1. MetTel further states, "[i]n addition, the transaction between MetTel and Capital/Starvox was approved by the Wireline Competition Bureau in Docket 07-275, DA 08-75 (rel. Jan. 11, 2008) and in Docket 07-288, DA 08-119 (rel. Jan. 17, 2008)." *Petition* at 2.

²² The cover letter accompanying MetTel's copy of the letter notification to the Commission attached to the *Petition* indicates a FCC/OS date stamp of December 3, 2007. See *Petition* at Exhibit 1. We note that the complaint was filed against MetTel, the notice of informal complaint was served on MetTel, and the response to the Commission's notice of informal complaint was from MetTel. The filing required by Section 64.1120(e), however, was filed under the name "Manhattan Telecommunications Corporation d/b/a Metropolitan Communications."

²³ 47 C.F.R. § 64.1120(e)(3)(ii).

²⁴ See *Streamlining Order*, 16 FCC Rcd 11218, 11227 at para. 22. The Commission has also reiterated that acquiring carriers are required to provide affected subscribers with "detailed information concerning the rates, terms and conditions of the service(s) to be provided to transferred customers." See *2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation*

the advance notice “will enable transferred subscribers to make a timely, informed decision regarding their ultimate choice of service providers.”²⁵

9. Moreover, the provision of detailed information ensures that subscribers can be certain of the rates, terms, and conditions the acquiring carrier will impose. For subscribers who do not retain bills or copies of their current service provider's terms and conditions, it might be difficult for them to confirm their rates, terms, and conditions after the transfer takes place — particularly if the carrier transferring the subscribers is no longer in business. In the *Commission Reconsideration Order*, the Commission stated that, “[b]ecause the acquiring carrier is no longer required to obtain each individual subscriber’s consent [in the context of the streamlined procedures for transfer], it is critical that the advance written notice contain at least some level of detail as to the rates, terms and conditions of the services the acquiring carrier will provide.”²⁶ MetTel’s letter notification to the subscribers stated only that, “[a]s a MetTel customer, your phone numbers will remain unchanged and you will continue to receive your same services at the same rates, terms and conditions as at present.”²⁷ The Bureau previously found that a carrier’s statement that Complainants’ rates will “stay the same” does not satisfy the “detailed information” requirement concerning the acquiring carrier’s rates, terms and conditions.²⁸ Thus, MetTel’s letter notification did not contain the *detailed* information required by the Commission.²⁹

10. We also note that MetTel’s advance subscriber notice violates the Commission’s rules because it does not indicate “the means” for notifying the subscriber of any changes(s) to the rates, terms, and conditions of the subscribers’ service.³⁰ We find, therefore, that MetTel’s streamlined procedure filing was deficient and, accordingly, we deny MetTel’s *Petition*.

III. ORDERING CLAUSES

11. 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 Manhattan Telecommunications Corporation d/b/a Metropolitan Telecommunications on September 23, 2008, IS DENIED.

of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, First Order on Reconsideration in CC Docket No. 00-257 and Fourth Order on Reconsideration in CC Docket No. 94-129, 19 FCC Rcd 13432, 13439 at para. 18 (2004) (*Commission Reconsideration Order*).

²⁵ See *Commission Reconsideration Order*, 19 FCC Rcd 13432, 13439 at para.18. (requiring at least some level of detail as to the rates, terms and conditions of the services the acquiring carrier will provide). The Commission also stated that it is difficult to imagine how a subscriber could make this sort of [carrier selection] decision without knowing, for example, the rates the acquiring carrier will charge. See *id.*

²⁶ See *id.*

²⁷ See *Petition* at Exhibit 1.

²⁸ See *United Systems Access Telecom, Inc.*, Order on Reconsideration, 19 FCC Rcd 4528, 4530 at para 5. (2004) (finding that a “customer notice letter” which states that a subscriber’s rates, terms and conditions will stay the same did not satisfy the Commission’s “detailed information” requirement).

²⁹ See *Commission Reconsideration Order*, 19 FCC Rcd 13432, 13439 at para. 18.

³⁰ See 47 C.F.R. § 64.1120(e)(3)(ii).

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau