

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

In the Matter of)	
)	
Embarq Communications)	IC No. 08-S0293390
)	
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 grant a petition filed by Embarq asking us to reconsider a finding that Embarq 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 find that Embarq's actions did not violate the Commission's carrier change rules.² We therefore grant Embarq'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.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 Embarq (filed November 20, 2008) (*Petition*), seeking reconsideration of *Embarq Communications*, 23 FCC Rcd 16001(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 to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on April 21, 2008, alleging that Complainant's telecommunications service provider had been changed from IDT to AT&T Corporation (AT&T) without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified AT&T of the complaint.¹⁴ In response, AT&T stated that Complainant's carrier or the carrier involved in the alleged switching of telephone service is a carrier that purchases from AT&T certain telecommunications services identified as AT&T Network Connection Service (ANC).¹⁵ Based on AT&T's response, the Division notified Embarq, Complainant's local exchange carrier (LEC), of the complaint because AT&T's response cited potential mistakes made by Complainant's LEC that could have led to the complaint.¹⁶ Embarq responded,¹⁷ but the Division believed that Embarq did not address

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-S02933390, filed April 21, 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 Notice of Informal Complaint No. IC 08-S02933390 to AT&T from the Deputy Chief, Division, dated April 24, 2008.

¹⁵ AT&T's Response to Informal Complaint No. 08-S02933390, received May 20, 2008 (AT&T Response). According to AT&T, ANC is a CIC-based platform that requires the purchasing carrier to have its own Carrier Identification Code (CIC). Using ANC, the purchasing carrier does its own provisioning with the relevant local exchange carrier (LEC).

¹⁶ Notice of Informal Complaint No. IC 08-S02933390 to Embarq from the Deputy Chief, Division, dated August 8, 2008.

¹⁷ Embarq's Response to Informal Complaint No. IC 08-S02933390, received September 8, 2008.

certain issues raised in AT&T's response and, therefore, sent Embarq a second request. Specifically, the Division asked Embarq to address the following: 1) whether or not Embarq is CIP capable; 2) whether or not Embarq opened the reseller's CIC; and 3) whether or not Embarq properly processed the request to open the CIC of the reseller in all of Embarq's tandems.¹⁸ In response to this request, Embarq referred the Division to its Supplemental Response filed on September 18, 2008.¹⁹ The *Division Order* indicated that Embarq's Supplemental Response did not address all of the issues raised by AT&T about which the Division sought further information and, thus, determined that Embarq failed to provide the requested information.²⁰ Therefore, the Division found that Embarq's actions resulted in a violation of our carrier change rules.²¹ Embarq 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, Embarq did not violate the Commission's carrier change rules because Embarq did not change Complainant's service in an unauthorized manner.

7. Upon further review, we agree with Embarq that its Supplemental Response provided the information which the Division requested. Specifically, Embarq's Supplemental Response included the customer's PIC history, which showed that Embarq properly provisioned the customer's PIC to IDT (the authorized carrier), and that Embarq did not change Complainant's service away from IDT without authorization from a subscriber.²² The PIC history provided by Embarq also indicated no change of service from IDT to AT&T.²³ It appears the complaint resulted from a billing issue and not a switch of carriers. Accordingly, we grant the *Petition*.²⁴

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 Embarq on November 20, 2008, IS GRANTED and the complaint filed against Embarq on April 21, 2008, IS DENIED.

¹⁸ See electronic mail to Joseph J. Harper, Embarq, from Bert Weintraub, FCC, dated October 2, 2008.

¹⁹ See electronic mail to Bert Weintraub from Sharron Turner, Manager, Embarq, dated October 2, 2008 (containing Embarq's supplemental response to Informal Complaint No. IC 08-S0293390, filed September 18, 2008 (Supplemental Response)).

²⁰ See *Order*, 23 FCC Rcd 16001(2008).

²¹ See *id.*; see also 47 C.F.R. § 64.1150(d).

²² See PIC history attached to Supplemental Response.

²³ See *id.*

²⁴ Because we grant the *Petition* for the reasons set forth above, we need not address Embarq's remaining arguments.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau