

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

In the Matter of)	
)	
Main Street Telephone Company)	IC No. 08-S0294368
)	
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 Main Street Telephone Company (Main Street) asking us to reconsider a finding that Main Street 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 Main Street's actions did not violate the Commission's carrier change rules.² We therefore grant Main Street'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

¹ See Application for Review of Action Taken Pursuant to Delegated Authority of Main Street Telephone Company (filed January 21, 2009) seeking reconsideration of *Main Street Telephone Company*, 23 FCC Rcd 18128 (2008) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). Main Street's filing is being treated as a Petition for Reconsideration pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106, and we may properly consider the merits of the *Petition* because it was filed within thirty days of release of the *Division Order*. Cf. *Southern Union Gas Company*, 15 FCC Rcd 10995, 10996 (2000) (treating a petition to revoke as a petition for reconsideration); *Burlington Cablevision, Inc.*, 13 FCC Rcd 772 (1998) (treating an application for review as a petition for reconsideration).

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.

3. The rules require that a submitting carrier receive individual subscriber consent before a 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 September 2, 2008, alleging that Complainant's telecommunications service provider had been changed to Main Street without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified Main Street of the complaint.¹⁴ In response, Main Street stated it received authorization when an electronic letter of agency (LOA) was signed and processed.¹⁵ The Division determined that the LOA did not contain, among other several missing pieces of required information, language that confirms that the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.¹⁶ The Division found that Main Street failed to produce clear and convincing evidence of a valid authorized carrier change and, therefore, that Main Street's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁷ Main Street

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-S0294368, filed September 2, 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-S0294368 to Main Street Telephone Company from the Deputy Chief, Division, dated September 17, 2008.

¹⁵ Main Street Telephone Company's Response to Informal Complaint No. IC-08-S0294368, received October 3, 2008.

¹⁶ See 47 C.F.R. § 64.1130(e).

¹⁷ See *Order*, 23 FCC Rcd 18128 (2008); see also 47 C.F.R. § 64.1150(d).

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, Main Street did not violate the Commission's carrier change rules.

7. We agree with Main Street's contention that there is no evidence Main Street changed the preferred telecommunications carrier for Complainant's telephone number to itself or any other carrier. Instead, we concur with Main Street that Complainant purchased Main Street's Save4Less Plan, which is a dial-around service that allows the making of domestic calls from any phone anywhere in the United States and, as such, did not require any change in the preferred carrier for Complainant's telephone number.¹⁸ We agree that the Division erroneously found that it switched Complainant's long distance carrier, and that the *Division Order* should be reversed. Consequently, there was no violation of the Commission's carrier change rules. Accordingly, we grant the *Petition*.

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 Main Street Telephone Company on January 21, 2009, IS GRANTED and the complaint filed against Main Street Telephone Company on September 2, 2008, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

¹⁸ See *Petition* at 2.