

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

In the Matter of	)	
	)	
XO Communications	)	IC No. 08-S0293870
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: April 28, 2009**

**Released: April 30, 2009**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint filed by Complainant<sup>1</sup> alleging that XO Communications (XO) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>2</sup> We conclude that XO's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of

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<sup>1</sup> Informal Complaint No. IC 08-S0293870, filed July 14, 2008.

<sup>2</sup> See 47 C.F.R. §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *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 Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

a provider of telephone exchange service or telephone toll service.<sup>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (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.<sup>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, 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.<sup>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup> Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.<sup>10</sup>

4. We received Complainant's complaint on July 14, 2008, alleging that Complainant's telecommunications service provider had been changed from Access One Communications to XO without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>11</sup> we notified XO of the complaint and XO responded on July 31, 2008.<sup>12</sup>

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<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> See 47 C.F.R. § 64.1120.

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</sup> 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.

<sup>8</sup> 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. *Id.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See 47 U.S.C. § 503.

<sup>11</sup> 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).

The complaint states that three of the lines of the Complainant were slammed by XO. XO responded that all twenty-seven lines, including the three in question, were ported to XO on June 28, 2007. XO states that Allegiance Telecom was providing service for these same twenty-seven lines until March 4, 2004. On that date, XO acquired ownership of Allegiance Telecom and began providing service to those lines. 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 streamline procedures.<sup>13</sup> Under these procedures, the acquiring carrier must file with the Commission's Office of the Secretary, 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.<sup>14</sup> 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.<sup>15</sup> Subsequently, the Commission explained that providing such detail in the advance notice "will enable transferred subscribers to make a timely, informed decision regarding their ultimate choice of service providers."<sup>16</sup>

5. 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

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<sup>12</sup> XO Communications's Response to Informal Complaint No. 08-S0293870, received July 31, 2008.

<sup>13</sup> See 47 C.F.R. § 64.1120(e).

<sup>14</sup> 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).

<sup>15</sup> 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 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*).

<sup>16</sup> 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.*

detail as to the rates, terms and conditions of the services the acquiring carrier will provide.”<sup>17</sup> XO did not provide such detail in its notice letter to the Complainant. The letter only stated that “the Complainant will receive the “same rules terms and conditions.”

6. Further, the advance subscriber notice letter needs to state whether the acquiring carrier will be responsible for handling any complaints filed, or otherwise raised, prior to or during the transfer against the selling or transferring carrier.<sup>18</sup> XO’s notice letter did not include such a statement. We find, that XO has failed to follow the streamlined procedures as required by our rules. Accordingly we grant Complainant’s complaint.<sup>19</sup>

7. XO must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission’s liability rules.<sup>20</sup> We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred, XO nor Access One may pursue any collection against Complainant for those charges.<sup>21</sup> Any charges imposed by XO on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying at the time of the unauthorized change.<sup>22</sup>

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 and 1.719 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against XO Communications IS GRANTED.

9. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission’s rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred nor XO Communications or Access One may pursue any collection against Complainant for those charges.

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<sup>17</sup> *See id.*

<sup>18</sup> *See* 47 C.F. R. § 64.1120(e)(3)(vi).

<sup>19</sup> If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission’s rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant’s informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. *See* 47 C.F.R. § 1.719.

<sup>20</sup> *See* 47 C.F.R. § 64.1160(b).

<sup>21</sup> *See* 47 C.F.R. § 64.1160(d).

<sup>22</sup> *See* 47 C.F.R. §§ 64.1140, 64.1160.

10. IT IS FURTHERED ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau