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

In the Matter of	)	
	)	
Network Service Billing, Inc.	)	IC No. 09-S0296663
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER

Adopted: January 27, 2010 **Released: January 29, 2010**

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

1. In this Order, we consider the complaint[1] alleging that Network Service Billing, Inc. (NSBI) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.[2] We conclude that NSBI'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).[3] Section 258 prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection

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[1] Informal Complaint No. IC 09-S0296663, filed August 5, 2009.

[2] *See* 47 C.F.R. §§ 64.1100 – 64.1190.

[3] 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); Fourth Report and Order, 23 FCC Rcd 493 (2008). 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 Carrier*s, 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).

of a provider of telephone exchange service or telephone toll service.[4] 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.[5] 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.[6] 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.[7]

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.[8] 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.[9] 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.[10]

4. We received Complainant's complaint on August 5, 2009, alleging that Complainant's telecommunications service provider had been changed to NSBI without Complainant's authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,[11] we notified NSBI of the complaint and NSBI responded on August 31, 2009.[12] NSBI states that

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4 47 U.S.C. § 258(a).

5 *See* 47 C.F.R. § 64.1120.

6 47 U.S.C. § 258(a).

7 *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.

8 *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.*

9 *See* 47 C.F.R. §§ 64.1140, 64.1170.

10 *See* 47 U.S.C. § 503.

11 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).

12 NSBI's Response to Informal Complaint No. IC 09-S0296663, received August 31, 2009.

authorization was received and confirmed through independent third party verification (TPV). We have reviewed the TPV that NSBI submitted with its response. During the course of the TPV, the verifier recited a list of telephone numbers presumably associated with the business, but did not specifically elicit the "telephone numbers to be switched."[13] Our rules require that the TPV elicit the numbers that are to be *switched*, rather than merely verifying numbers associated with a business or residence, or for what purpose the numbers are used.[14] As we emphasized in the *Fourth Report and Order,* "any description of the carrier change transaction…shall not be misleading."[15] We find that NSBI's actions were in violation of our carrier change rules, and we discuss NSBI's liability below.[16]

5. Pursuant to Section 64.1170(b) our rules, NCT must forward to AT&T an amount equal to 150% of all charges paid by the subscriber to NCT along with copies of any telephone bills issued from NCT to the Complainant.[17] Within ten days of receipt of this amount, AT&T shall provide a refund or credit to Complainant in the amount of 50% of all charges paid by Complainant to NCT. Complainant has the option of asking AT&T to re-rate NCT charges based on AT&T rates and, on behalf of Complainant, seek from NCT, any re-rated amount exceeding 50% of all charges paid by Complainant to NCT. AT&T must also send a notice to the Commission, referencing this Order, stating that is has given a refund or credit to Complainant. [18] If AT&T has not received the reimbursement required from NCT within 45 days of the release of this Order, AT&T must notify the Commission and Complainant accordingly. AT&T also must notify the Complainant of his or her right to pursue a claim against NCT for a refund of all charges paid to NCT.[19]

6. 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 against NSBI IS GRANTED.

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[13] *See* 47 C.F.R. § 64.1120(c)(3)(iii).

[14] *See Id*.

[15] *See* 47 C.F.R. § 64.1120(c)(3)(iii); Fourth Report and Order, 23 FCC Rcd 493 (2008).

[16] 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 such 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.

[17] See 47 C.F.R. § 64.1170(b)(1)(2).

[18] *See* 47 C.F.R. § 64.1170(c).

[19] *See* 47 C.F.R. § 64.1170(e).

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(b) of the Commission's rules, 47 C.F.R. § 64.1170(b), that NCT must forward to AT&T an amount equal to 150% of all charges paid by the subscriber along with copies of any telephone bills issued from the company to the Complainant within ten (10) days of the release of this order.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

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