

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

In the Matter of)	
)	
Qwest Communications)	IC No. 09-S0295735
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER

Adopted: May 25, 2010**Released: May 28, 2010**

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

1. In this Order, we consider the complaint¹ alleging that Qwest Communications (Qwest) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that Qwest's actions violated the Commission's carrier change rules 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

¹ Informal Complaint No. IC 09-S0295735, filed April 29, 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). 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).

“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.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 April 29, 2009, alleging that Complainant’s telecommunications service provider had been changed from Com Tech, LLC (Com Tech) to AT&T, Inc. (AT&T) without Complainant’s authorization. Pursuant to Sections 1.719 and 64.1150 of the Commission’s rules¹¹ we notified AT&T of the complaint and AT&T

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).

responded on June 4, 2009.¹² AT&T stated that it did not submit an order to switch Complainant's long distance service to AT&T. It also stated that it billed for Complainant's calls routed over AT&T's network because Qwest, Complainant's local exchange carrier (LEC), sent the traffic with Carrier Identification Code (CIC) 288 and did not send AT&T the Alliance CIC code.¹³ Based on AT&T's response and pursuant to Sections 1.719 and 64.1150 of the Commission's rules¹⁴ we notified Qwest of the complaint and Qwest responded on July 24, 2009.¹⁵ Qwest responded that Complainant's service was set up with Alliance's CIC 5237. It also stated that AT&T did not submit an order to switch Complainant's service, that a realigning of traffic for AT&T in Complainant's state did not affect Alliance's 5237 CIC, there were no issues with 5237 CIC, and Qwest determined that the customer had Alliance as its long distance carrier. Based on Qwest's response, we sent AT&T the response of Qwest.¹⁶ AT&T replied that Qwest confirmed there were no orders from AT&T.¹⁷ We also requested that Qwest provide proof of routed calls to Alliance.¹⁸ Qwest replied by sending a printout titled "Route Index (Routing)."¹⁹ We have reviewed the "Route Index (Routing)" item submitted by Qwest. The only CIC code we observe is 288, which is AT&T's CIC. Nowhere on this Qwest submission do we see Alliance's CIC 5237. As a result, and based on the collective responses and replies of AT&T and Qwest, we are persuaded that Qwest's actions, and not those of AT&T, resulted in an unauthorized switch of Complainant's authorized carrier. Therefore, we find that Qwest's actions were in violation of our carrier change rules, and we discuss Qwest's liability below.²⁰

¹² AT&T, Inc.'s Response to Informal Complaint No. IC 09-S0295735, received June 4, 2009.

¹³ According to ComTech, Alliance is Com Tech's underlying carrier. *See* Com Tech attachment accompanying Complainant's complaint.

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 Qwest Communication's Response to Informal Complaint No. IC 09-S0295735, received July 24, 2009.

¹⁶ *See* e-mail from Selina Ayers, FCC, to Toni Acton, AT&T (dated October 28, 2009).

¹⁷ *See* e-mail from Toni Acton, AT&T, to Selina Ayers, FCC (dated October 30, 2009). We asked AT&T: if AT&T was acting as an Alliance reseller and could it have been an AT&T problem with its reseller. *See* e-mail from Toni Acton, AT&T, to Selina Ayers, FCC (dated November 12, 2009). AT&T responded that Alliance was reselling AT&T services but it has its own CIC code, so this was not an issue between AT&T and Alliance. *See* e-mail from Toni Acton, AT&T, to Selina Ayers, FCC (dated November 18, 2009). AT&T further stated the fact that AT&T billed for the call and not Alliance is evidence that Qwest routed the calls to the AT&T CIC. *See id.*

¹⁸ *See* e-mail from Selina Ayers, FCC, to Brenda Spence, Qwest (dated November 12, 2009).

¹⁹ *See* e-mail from Brenda Spence, Qwest, to Selina Ayers, FCC (dated December 1, 2009).

²⁰ 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.

5. Qwest 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.²¹ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and AT&T nor Qwest may pursue any collection against Complainant for those charges.²² Any charges imposed by AT&T on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to Com Tech, LLC at the time of the unauthorized change.²³

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 Qwest Communications IS GRANTED.

7. 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 and neither Qwest or AT&T may pursue any collection against Complainant for those charges.

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

²¹ See 47 C.F.R. § 64.1160(b).

²² See 47 C.F.R. § 64.1160(d).

²³ See 47 C.F.R. §§ 64.1140, 64.1160.