

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

In the Matter of)	
)	
Sprint Nextel Corporation)	IC No. 09-S002371
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: October 3, 2011

Released: October 4, 2011

By the Acting Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order on Reconsideration, we grant a Petition for Reconsideration filed by Sprint Nextel Corporation (Sprint), asking us to reconsider an Order finding that Sprint violated the Commission's carrier change rules by failing to timely respond to a complaint.¹ On reconsideration, we find that Sprint did timely respond and that its actions did not violate the Commission's carrier change rules. We accordingly grant Sprint's *Petition* and deny the complaint.²

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 combat and deter slamming by taking the profit out of the practice.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 Commission's carrier change rules require that a submitting carrier receive

¹ See Petition for Reconsideration of Sprint Nextel Corporation (filed July 7, 2009) (*Petition*), seeking reconsideration of *Sprint Nextel Corporation*, Order, 24 FCC Rcd 8840 (2009) (*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.

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 rules regarding carrier liability for service charges where slamming has occurred.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 the subject complaint on April 14, 2009, alleging that the complainant's telecommunications service provider had been changed to Sprint without the complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified Sprint of the complaint.¹⁴ The *Division Order* concluded that Sprint had failed to respond within 30 days of receipt of the complaint, as required by the Commission's rules.¹⁵ The Division found, therefore, that because Sprint had failed to timely respond to the complaint, it had violated the Commission's carrier change rules.¹⁶ By its subject *Petition*, Sprint seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we set aside the *Division Order* and grant Sprint's *Petition*. As discussed below, Sprint timely responded to the complaint within the required 30-day time frame and did not violate the Commission's carrier change rules.

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 09-S002371, filed April 14, 2009.

¹³ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to 47 U.S.C § 258); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁴ Notice of Informal Complaint No. IC 09-S002371 to Sprint from the Deputy Chief, Division, dated April 24, 2009.

¹⁵ See 47 C.F.R. § 64.1150(d).

¹⁶ See *Division Order* at 2.

7. In its *Petition*, Sprint contends that, as can be seen from the electronic mail documentation attached to its *Petition*,¹⁷ it did in fact file a response to the complaint on April 28, 2009 – one day after it had received the complaint and four days after the date on the FCC’s Notice of Informal Complaint letter.¹⁸ Sprint attached to its *Petition* a copy of its claimed April 28 response.¹⁹ Sprint thus argues that, because it timely responded to the complaint and because its response demonstrates that it did not change the complainant’s long distance carrier without the required authorization, the *Division Order* should be rescinded and the complaint denied.²⁰

8. A search of the Commission’s slamming complaint records confirms that Sprint did respond to the complaint within 30 days of receipt of the complaint. Regarding the alleged unauthorized switch, in its Response, Sprint stated that it received Customer Account Record Exchange (CARE) code 2009 from the complainant’s local exchange carrier (LEC), which indicated that the complainant had requested the switch to Sprint through contact with the LEC (AT&T, Inc.), effective October 15, 2008.²¹

9. Based on the Sprint Response, and pursuant to Sections 1.719 and 64.1150 of the Commission’s rules,²² the Division notified AT&T, Inc. of the complaint and Sprint’s Response.²³ In its response, AT&T confirmed that its records indicate the PIC was changed from Global Crossing to Sprint on March 28, 2006 via mechanized order.²⁴ AT&T further stated that: 1) the PIC was changed from Sprint to “none” on October 13, 2008, via an order issued by a representative in the AT&T Business Office, 2) the PIC and LPIC were changed to Sprint on October 15, 2008, via an order issued by a representative in the AT&T Business Office, and 3) the PIC and LPIC were changed from Sprint to Global Crossing on December 4, 2008, via an order issued by a representative in the AT&T Business Office.²⁵ AT&T attached a copy of the PIC and LPIC history with its response. Based upon Sprint’s Response and the information provided by AT&T, we find that Sprint’s actions did not violate the Commission’s carrier change rules. Accordingly, we set aside the *Division Order* and grant the *Petition*.

¹⁷ See *Petition* at Attachment 1.

¹⁸ See *Petition* at 1.

¹⁹ See *Petition* at Attachment 2. Sprint Response to Informal Complaint No. 09-S002371, to the Deputy Chief, Division (dated April 24, 2009) (Sprint Response).

²⁰ See *Petition* at 1-2.

²¹ See Sprint Response at 1. Sprint attached a copy of the CARE code to the Sprint Response. CARE codes track transactions between a LEC and an interexchange carrier.

²² 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).

²³ Notice of Informal Complaint No. IC 09-S002371 to AT&T, Inc., from the Deputy Chief, Division, dated July 13, 2009.

²⁴ See AT&T Inc.’s Response to Informal Complaint No. IC 09-S002371, received August 13, 2009.

²⁵ “PIC” is an acronym for Primary Inter-exchange Carrier and “LPIC” is an acronym for Local Inter-exchange Carrier.

III. ORDERING CLAUSES

10. 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 for Reconsideration filed by Sprint on July 7, 2009, IS GRANTED and the complaint filed against Sprint on April 14, 2009, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

William D. Freedman
Acting Deputy Chief
Consumer & Governmental Affairs Bureau