

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

In the Matter of)	
)	
Business Network Long Distance)	IC No. 09-S002273
)	
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 deny a Petition for Reconsideration filed by Business Network Long Distance (BNLD), asking us to reconsider an Order finding that BNLD violated the Commission's carrier change rules by failing to respond to a complaint within 30 days.¹ On reconsideration, we affirm that BNLD's actions violated the Commission's carrier change rules and deny the *Petition*.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 individual subscriber consent before a carrier change may occur.⁷ Specifically, a carrier must: (1) obtain

¹ See Petition for Reconsideration of Business Network Long Distance (filed July 10, 2009) (*Petition*), seeking reconsideration of *Business Network Long Distance*, Order, 24 FCC Rcd 8880 (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 *id.*

⁶ See *id.* at 1549, para. 66.

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).

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 January 2, 2009, alleging that the complainant's telecommunications service provider had been changed from AT&T, Inc. to BNLD without the complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified BNLD of the complaint.¹⁴ The *Division Order* concluded that BNLD had failed to respond within 30 days of receipt of the complaint, as required by our rules.¹⁵ Because BNLD failed to timely respond to the complaint, the Division found that BNLD violated the Commission's carrier change rules.¹⁶ By its subject Petition, BNLD seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we affirm the *Division Order* and deny BNLD's *Petition*. As discussed below, BNLD failed to respond to the complaint within the required 30-day time frame and thus violated the Commission's carrier change rules.

7. In its *Petition*, BNLD states that it is seeking reconsideration of the *Division Order* because it did in fact submit a timely response.¹⁷ BNLD includes with its *Petition* a copy of what it claims to be "the original letter sent on January 29, 2009 and a duplicate third-party verification recording

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-S002273, filed January 2, 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 See Notice of Informal Complaint No. 09-S002273 to BNLD from the Deputy Chief, Division, CGB, dated January 14, 2009. According to the U.S. Postal Service's online certified mail tracking system, the Notice of Informal Complaint was received by BNLD on January 20, 2009.

¹⁵ See 47 C.F.R. § 64.1150(d).

¹⁶ See *Division Order* at para. 4.

¹⁷ *Petition* at 1. Attached to the *Petition* is a letter from Pamela S. Rieck, Regulatory Affairs Director, BNLD, to the Consumer Policy Division, Consumer & Governmental Affairs Bureau (dated January 29, 2009) and a compact disc (containing an audio recording of a TPV).

of the sale.”¹⁸ Staff searched the Commission’s slamming complaint database and the slamming@fcc.gov mailbox, but the searches did not produce any evidence or documents confirming that BNLD filed a response to the complaint within 30 days of receiving the complaint. Moreover, CGB staff contacted BNLD to inquire if its response was sent via hard copy or via e-mail: BNLD could not identify which method it allegedly used to respond, nor produce any evidence of such a submission, such as a timely e-mail sent by BNLD containing a response, or a copy of a paper response that had been date-stamped by the Commission.¹⁹

8. Accordingly, we affirm the finding of the Division that BNLD violated the Commission’s carrier change rules by not responding to the complaint within 30 days.²⁰ We therefore deny the *Petition*.

III. ORDERING CLAUSES

9. 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 Business Network Long Distance on July 10, 2009, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁸ *See id.*

¹⁹ A telephone call was made from Bert Weintraub, Attorney Advisor, Division, CGB, to Alicia G. Treder, Regulatory and Compliance Manager, BNLD (call made July 15, 2009).

²⁰ *See MCI Communications, Inc.*, 24 FCC Rcd 5700, 5702 (2009) (“We note[] that we have explicitly stated that we will strictly enforce the requirement that a carrier provide clear and convincing evidence of authorization of the carrier change within the 30-day time frame specified by the Commission’s rules.”).