

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

In the Matter of	)	
	)	
LoTel, Inc. d/b/a Coordinated Billing Services	)	IC No. 10-S002727
	)	
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 LoTel, Inc. d/b/a/ Coordinated Billing Services (CBS), asking us to reconsider an Order finding that it changed the complainant's telecommunications service provider in violation of the Commission's carrier change rules by failing to obtain proper authorization and verification.<sup>1</sup> On reconsideration, we find that the complaint alleging the misconduct was not filed within two years of the violation, as required by the Communications Act of 1934, as amended (the Act). We accordingly grant CBS's *Petition* and dismiss the complaint.<sup>2</sup>

**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.<sup>3</sup> The rules were designed to combat and deter slamming by taking the profit out of the practice.<sup>4</sup> The Commission applied the rules to all wireline carriers,<sup>5</sup> and modified its existing requirements for the authorization and verification of preferred carrier changes.<sup>6</sup>

<sup>1</sup> See Petition for Reconsideration of LoTel, Inc. d/b/a Coordinated Billing Services (filed July 27, 2010) (*Petition*) seeking reconsideration of *LoTel, Inc. d/b/a Coordinated Billing Services*, Order, 25 FCC Rcd 8283 (2010) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

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

<sup>3</sup> See *id.*; see also 47 U.S.C. § 258(a).

<sup>4</sup> 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.

<sup>5</sup> See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

<sup>6</sup> See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

3. The Commission's carrier change rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.<sup>7</sup> 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.<sup>8</sup>

4. The Commission also adopted rules regarding carrier liability for service charges where slamming has occurred.<sup>9</sup> 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>10</sup> 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.<sup>11</sup>

5. The Commission received the subject complaint on March 18, 2010, alleging that the complainant's telecommunications service provider had been changed to CBS without the complainant's authorization.<sup>12</sup> Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,<sup>13</sup> the Division notified CBS of the complaint.<sup>14</sup> In response, CBS stated that authorization was received and confirmed through third party verification (TPV) but that, due to a recording failure, CBS was unable to provide the TPV.<sup>15</sup> The *Division Order* found that, in light of its failure to have provided the TPV, CBS had failed to produce clear and convincing evidence of a valid authorized carrier change. The Division accordingly concluded that CBS's actions resulted in an unauthorized change in the complainant's telecommunications service provider.<sup>16</sup> By its subject Petition, CBS seeks reconsideration of the *Division Order*.

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<sup>7</sup> 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).

<sup>8</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>9</sup> See 47 C.F.R. §§ 64.1140, 64.1160-70.

<sup>10</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).

<sup>11</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>12</sup> Informal Complaint No. IC 10-S002727, filed March 18, 2010.

<sup>13</sup> 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).

<sup>14</sup> Notice of Informal Complaint No. IC 10-S002727 to LoTel, Inc. d/b/a Coordinated Billing Services from the Deputy Chief, Division, dated March 31, 2010.

<sup>15</sup> LoTel, Inc. d/b/a/ Coordinated Billing Services' Response to Informal Complaint No. IC-10-S002727, received April 29, 2010.

<sup>16</sup> See *Order*, 25 FCC Rcd 8283 (2010); see also 47 C.F.R. § 64.1150(d).

## II. DISCUSSION

6. Based on the record before us, we set aside the *Division Order*, grant the *Petition*, and dismiss the complaint. As CBS notes in its *Petition*, the complaint was filed over two years after the alleged violation. Indeed, the complaint alleges that CBS billing charges for long distance calls “has been going on for a long time.” The complainant also did not dispute CBS’s representation that its service for the telephone line in question had been switched to it more than nine years before the date of the complaint. In the *Section 258 Order*, the Commission stated that Section 415(b) of the Act<sup>17</sup> is applicable to slamming complaints, and indicated that “... any person desiring to file a complaint with the Commission alleging a violation of the Act must do within two years of the violation.”<sup>18</sup> We agree that the complaint was not filed within the required two years of the alleged violation.

## III. ORDERING CLAUSES

7. 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 filed by LoTel, Inc. d/b/a Coordinated Billing Services on July 27, 2010, IS GRANTED and the complaint filed against LoTel, Inc. d/b/a Coordinated Billing Services on March 18, 2010, IS DISMISSED.

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

FEDERAL COMMUNICATIONS COMMISSION

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

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<sup>17</sup> 47 U.S.C. § 415(b) (“All complaints against carriers for the recovery of damages not based on overcharges shall be filed with the Commission within two years from the time the cause of action accrues, and not after...”).

<sup>18</sup> See *Section 258 Order*, 14 FCC Rcd at 1553, n.236, citing 47 U.S.C. § 415.