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

In the Matter of	)	
	)	
Inmark, Inc. d/b/a Preferred Billing	)	IC No. 10-S2684451
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

ORDER ON RECONSIDERATION

Adopted: August 16, 2012 **Released: August 17, 2012**

By the Acting Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we address a Petition for Reconsideration filed by Inmark, Inc. d/b/a Preferred Billing (Preferred), asking us to reconsider an order issued by our Consumer Policy Division finding that Preferred changed the Complainant's telecommunications service provider in violation of the Commission's carrier change rules by failing to obtain proper authorization and verification.[1] On reconsideration, we affirm that Preferred's actions violated the Commission's carrier change rules and deny the *Petition*.[2]

II. BACKGROUND

2. Prior to enactment of Section 258,[3] the Commission had taken steps to address the problem of slamming, *i.e.*, 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] Section 258 of the Communications Act, adopted as part of the 1996 Telecommunications Act, prohibits slamming.[5] In December 1998, the Commission adopted rules implementing Section 258.[6] Specifically, the

[1] *See* Petition for Reconsideration of Inmark, Inc. d/b/a Preferred Billing (filed May 31, 2011) (*Petition*), seeking reconsideration of *Inmark, Inc. d/b/a Preferred Billing*, Order, 26 FCC Rcd 6357 (CGB Consumer Policy Div. 2011) (*Division Order*).

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

[3] 47 U.S.C. § 258.

[4] *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 FCC 2d 911, 101 FCC 2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

[5] 47 U.S.C. § 258(a).

[6] *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 (1998) (*Section 258 Order*).

Commission adopted rules concerning how carriers must obtain and prove consumer consent to carrier changes, and their liability to the authorized carrier (and, in turn, the consumer) if they fail to comply with those rules.[7] The Commission stated that these new rules were designed "to take the profit out of slamming"[8] and applied the rules to all wireline carriers.[9]

3. In relevant part, the rules require that a submitting carrier follow specific verification steps to show subscriber consent before submitting or executing a carrier change.[10] 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.[11] If using an independent third party to verify the subscriber's change, the rules require, among other things, that the third party verification elicit confirmation that the "person on the [verification] call is authorized to make the carrier change."[12]

4. The Commission also adopted rules governing subscriber liability for carrier charges when slamming has occurred.[13] 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.[14] 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.[15]

5. On January 9, 2008, the Commission adopted the *Fourth Report and Order* concerning carrier changes, which, among other things, amended the third party verification rules.[16] In the *Fourth Report and Order* and the rules adopted therein, the Commission required that "any description of the carrier change transaction . . . must not be misleading"[17] and emphasized that third party verifiers must "convey explicitly that consumers will have authorized a carrier change, and not, for instance, an upgrade

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[7] *See id.*

[8] *See id.* at 1512, para. 4; *see also id.*at 1518-19, para. 13.

[9] *See id.* at 1560, para. 85. The Commission exempted CMRS providers from the verification requirements. *See id.*at 1560-61, para. 85.

[10] *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).

[11] *See* 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements with respect to letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

[12] 47 C.F.R. § 64.1120(c)(3)(iii).

[13] *See* 47 C.F.R. §§ 64.1140, 64.1160-70.

[14] *See id*. §§ 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).

[15] *See id.* § 64.1170.

[16] *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, Fourth Report and Order, 23 FCC Rcd 493 (2008) (*Fourth Report and Order*).

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

in existing service [or a] bill consolidation."[18] In the *Fourth Report and Order*, the Commission stated that "[t]he record reflects that carriers using ambiguous language to describe the nature of the transaction may lead to consumer confusion concerning the true purpose of the solicitation call."[19] The Commission stated that "such practices are misleading and unreasonable, and warrant specific treatment in our rules."[20]

6. The Commission received the subject complaint on June 3, 2010, alleging that Complainant's telecommunications service provider had been changed to Preferred without the complainant's authorization.[21] Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,[22] the Division notified Preferred of the complaint.[23] In response, Preferred stated that authorization was received and confirmed through third party verification (TPV).[24] The Division reviewed the TPV filed with Preferred's response. In the TPV, the verifier asked whether the person on the call was the "authorized person to make changes on the account."[25] The Division stated that a switch from one carrier to another carrier differs from merely making changes to the customer's account and that therefore, the verification language was misleading and prohibited by the *Fourth Report and Order*.[26] As a result, the Division found that Preferred's actions violated the Commission's carrier change rules. By its subject *Petition*, Preferred seeks reconsideration of the *Division Order*.

III. DISCUSSION

7. Based on the record before us, we affirm the *Division Order* and deny Preferred's *Petition*. As discussed below, Preferred violated the Commission's carrier change rules because Preferred failed to confirm that the person on the TPV was authorized to make a carrier change as required by the Commission's rules.

8. The facts in this case are not in dispute. In the TPV, the verifier asked whether the person on the call "was the authorized person to make changes on the account."[27] The sole issue here is whether this verification step complied with the Commission's requirements for independent third party verification (TPV) of subscriber consent to change carriers.

9. In its *Petition*, Preferred argues that the Division erred by selecting a single line of the TPV to reach its conclusion, and did not consider the totality of the TPV.[28] Preferred states the

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[18] *See Fourth Report and Order,* 23 FCC Rcd at 501-502, paras. 18-20.

[19] *Id.* at 501, para. 19.

[20] *Id*.

[21] Informal Complaint No. IC 10-S2684451, filed June 3, 2010.

[22] 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

[23] *See* Notice of Informal Complaint No. 10-S2684451 to Preferred from the Deputy Chief, Consumer Policy Division, CGB, dated July 2, 2010.

[24] Preferred's Response to Informal Complaint No. 10-S2684451, received July 28, 2010.

[25] *Id.*

[26] *See Inmark, Inc. d/b/a Preferred Billing*, Order, 26 FCC Rcd 6357 at 6358-59, para. 4.

[27] *Id*.

[28] *See Petition* at 2.

Commission does not mandate specific language to be used in TPV calls,[29] but simply requires that the TPV explicitly confirm that a carrier change was authorized.[30] According to Preferred, the TPV "clearly and conspicuously confirms the previously obtained authorization to change long distance service" and "explicitly conveys that the customer authorized a carrier change when the verifier asks, '[d]o you authorize changing your long distance service to Preferred Billing?'"[31] Preferred argues the TPV does not include any misleading statements "concerning upgrading the customer's phone service, a specific area of concern to the Commission" and that changing long distance service "is the only change discussed in the entire TPV."[32]

10. While our rules do not require specific language, Section 64.1120(c)(3)(iii) does require, among other things, that all third party verifiers "elicit, at a minimum the identity of the subscriber, [and] confirmation that the person on the call is authorized to make the carrier change . . . ."[33] In the instant case, the verifier asks whether the person on the call was "the authorized person to make changes on the account." As the *Division Order* stated, a switch from one carrier to another differs from merely making changes to the consumer's account.[34] Likewise, asking whether the consumer "authorize[s] changing your long distance carrier to Preferred Billing" does not elicit whether the consumer is in fact authorized to do so.[35]

11. As noted above, in the *Fourth Report and Order*, the Commission stated that "[t]he record reflects that carriers using ambiguous language to describe the nature of the transaction may lead to consumer confusion concerning the true purpose of the solicitation call."[36] The Commission stated that "such practices are misleading and unreasonable, and warrant specific treatment in our rules."[37] The *Fourth Report and Order* explicitly stated that *any* description of the carrier change transaction should not be misleading and that verifiers must elicit "confirmation that the person on the call understands that a carrier *change*, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized."[38] Further, we note that, in the complaint at issue here, the consumer alleged that s/he was told by the sales representative, that s/he would be receiving a new plan to

[29] The *Petition* cites *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, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 18 FCC Rcd 5099 (2003). *See Petition* at 3 n.1.

[30] *See id.* at 3.

[31] *See id.*

[32] *Id.*

[33] 47 C.F.R. § 64.1120(c)(3)(iii).

[34] *See Division Order,* 26 FCC Rcd at 6358-59, para. 4; *see also Consumer Telcom, Inc*., *Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, IC Nos. 09-S0295686 and 09-S0295918, Order on Reconsideration, DA 12-801, at para. 15 (CGB May 22, 2012) ("the verifier's question, 'Do you have authority to make changes to your long distance service?' did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*.").

[35] *See Petition* at 2.

[36] *Fourth Report and Order,* 23 FCC Rcd at 501, para. 18.

[37] *Id*.

[38] *Id*. (emphasis added).

reduce the bill, and not that s/he would be switching carriers.[39] Indeed, the consumer alleged that the sales representative told the consumer that the representative was in fact calling on behalf of the consumer's *authorized* carrier in order to lower his/her bill.[40] Preferred did not address these allegations, stating only that the independent third party verifier did not mention "upgrades" during the verification recording.[41] We take these unchallenged consumer allegations as further evidence that this cases involves exactly the consumer deception that the rule at issue is designed to prevent, *i.e.*, a consumer misled into believing that he or she will not be discussing a carrier change with the third party verifier.[42]

12. The Commission specifically stated that it "seeks[s] to ensure that verifiers confirm the consumer's intent to receive service *from a different carrier*, regardless of whether that is phrased as a 'change,' a 'switch,' or any other non-misleading term."[43] With respect to the TPV at hand, the verifier's question asking whether the person on the call was the "authorized person to make changes on the account" did not confirm that the person was authorized to make a change that would result in receiving service *from a different carrier*. The Division's selecting "one single line of the TPV" to reach its conclusion was not error because, as discussed above, all descriptions of the carrier change transaction must not be misleading."[44]

13. For the reasons stated above, we affirm the *Division Order* and deny Preferred's *Petition.*

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, Sections 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.719, and authority delegated by Sections 0.141 and 0.361 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, that the Petition for Reconsideration filed by Inmark d/b/a Preferred Billing on May 31, 2011, IS DENIED.

15. IT IS FURTHER ORDERED that this Order is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief
Consumer & Governmental Affairs Bureau

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[39] Informal Complaint No. IC 09-S0295686, filed April 21, 2009; Informal Complaint No. 09-S0295918, filed May 26, 2009.

[40] FCC Complaint 10-S2684451(a person called the consumer and "impersonated" the consumer's authorized carrier, stating that they would lower the consumer's bill).

[41] Preferred did not address these allegations, either in its response to the initial complaint or in the instant *Petition*. *See* Preferred Response to Informal Complaint No. 10-S2684451, received July 28, 2010; *Petition* at 1-4.

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

[43] *Fourth Report and Order,* 23 FCC Rcd at 502, para. 20 (emphasis added).

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