

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

In the Matter of)	
)	
Consumer Telcom, Inc.)	IC Nos. 09-S0295686
)	09-S0295918
Complaints Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: May 21, 2012

Released: May 22, 2012

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we address a petition filed by Consumer Telcom, Inc. (CTI) asking us to reconsider two *Division Orders* finding that CTI changed the Complainants' telecommunications service providers in violation of the Commission's rules by failing to obtain proper authorization and verification.¹ On reconsideration, we affirm that CTI'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 Consumer Telcom, Inc. (filed March 1, 2010) (*Petition*), seeking reconsideration of *Consumer Telcom, Inc.*, 25 FCC Rcd 1019 (2010), and *Consumer Telcom, Inc.*, 25 FCC Rcd 1001 (2010) (collectively, *Division Orders*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

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 on 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 must 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 liability rules for carriers that engage in slamming.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 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*, 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 . . .

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 id.* §§ 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*).

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 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 two Complainants’ complaints on, respectively, April 21, 2009, and May 26, 2009, alleging that their telecommunications service providers had been changed to CTI without Complainants’ authorization.²¹ Pursuant to Sections 1.719 and 64.1150 of the Commission’s rules,²² the Division notified CTI of the complaints.²³ In its responses, CTI stated that the consumers’ authorizations were received and confirmed through third-party verification (TPVs).²⁴ The Division reviewed the TPVs filed with CTI’s responses. In each TPV, the verifier asked whether the person on the call “has the authority to make changes to their long distance service.”²⁵ The Division stated that a switch from one carrier to another carrier differs from merely making changes to the customer’s services and that therefore the verification language was misleading and prohibited by the *Fourth Report and Order*.²⁶ The Division found that, in both cases, CTI’s actions violated the Commission’s carrier change rules. By its *Petition*, CTI seeks reconsideration of the *Division Orders*.

III. DISCUSSION

7. Based on the record before us, we affirm the *Division Orders* and deny CTI’s *Petition*. As discussed below, CTI violated the Commission’s carrier change rules because, in each case, CTI 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 these cases are not in dispute. In each TPV, the verifier asked whether the

¹⁷ See 47 C.F.R. 64.1120 (c)(3)(iii).

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 09-S0295686, filed April 21, 2009; and Informal Complaint No. 09-S0295918, filed May 26, 2009.

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 See Notice of Informal Complaint No. IC 09-S0295686 to CTI from the Deputy Chief, Consumer Policy Division, CGB, dated April 27, 2009; see Notice of Informal Complaint No. IC 09-S0295918 to CTI from the Deputy Chief, Consumer Policy Division, CGB, dated June 8, 2009.

²⁴ CTI’s Response to Informal Complaint No. IC-09-S0295686, received May 28, 2009; CTI’s Response to Informal Complaint No. IC-09-S0295918, received June 30, 2009.

²⁵ *Id.*

²⁶ See *Consumer Telcom, Inc.*, 25 FCC Rcd 1019 at 1020-21, para. 4; *Consumer Telcom, Inc.*, 25 FCC Rcd 1001 at 1002-03, para. 4.

person on the call “has the authority to make changes to their long distance service.”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*, CTI argues that the TPVs in the two cases at issue are virtually identical to the TPV the Division approved in an earlier CTI case, which included the verifier’s identical question, “Do you have the authority to make changes to your long distance service?”²⁸ CTI asserts the Division cannot now reasonably find that virtually identical verifications are deficient in one case but are “clear and convincing evidence of a valid authorized carrier change” in another.²⁹ CTI argues that such contradictory positions are arbitrary and capricious.³⁰

10. We note that the additional verification requirements in Section 64.1120(c)(3)(iii) as revised by the *Fourth Report and Order* became effective on July 30, 2008. The date of the TPV associated with the earlier case CTI cites was August 15, 2007, almost one year before the effective date of the *Fourth Report and Order* requirements. The dates of the TPVs at issue here were November 28, 2008 (*re* IC No. 09-S0295686) and January 7, 2009 (*re* IC No. 09-S0295918), four months and five months, respectively, after revised Section 64.1120(c)(3)(iii) became effective.

11. As such, we see no inconsistency here given the rule change set forth in the *Fourth Report and Order*. 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.”³¹ The Commission stated that “such practices are misleading and unreasonable, and warrant specific treatment in our rules.”³² 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.”³³ Further, we note that, in both of the complaints at issue here, the consumers alleged that they were told only that they would be receiving a new plan to reduce their bill, and not that they would be switching carriers.³⁴ CTI did not address these allegations,³⁵ and as such we take this as further evidence that these cases involve 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

²⁷ *Id.*

²⁸ *See Petition* at 5-6, referring to the TPV associated with *Consumer Telcom, Inc.*, 24 FCC Rcd 7296 (2009).

²⁹ *See Petition* at 5-6.

³⁰ *See Petition* at 6-7, citing various court cases.

³¹ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 18.

³² *Id.*

³³ *Id.* (emphasis added).

³⁴ Informal Complaint No. IC 09-S0295686, filed April 21, 2009; Informal Complaint No. 09-S0295918, filed May 26, 2009.

³⁵ CTI did not address these allegations, either in its response to the initial complaints or in the instant *Petition* (*see* CTI’s Response to Informal Complaint No. IC-09-S0295686, received May 28, 2009; CTI’s Response to Informal Complaint No. IC-09-S0295918, received June 30, 2009; *Petition*).

carrier change.³⁶

12. CTI also argues that the two verifications at issue here are consistent with the analysis in the Division and Bureau decisions in *Reduced Rate*.³⁷ In the *Reduced Rate* case, the Bureau affirmed the Division's finding that the language in the verification was misleading. Specifically, the verifier asked the consumer "[a]re you 18 years of age and duly authorized by the telephone account owner to make changes to and/or incur charges on this telephone account?" The person on the call in that case answered "yes." On reconsideration, the Bureau affirmed the Division, stating that "a 'yes' response by the person on the call does not provide clear and convincing evidence confirming that such person was 'authorized to make the carrier change' because the person on the call could have been confirming authorization only for incurring charges." CTI contends that both the Division and the Bureau found fault with *Reduced Rate's* use of the term "and/or" and that *Reduced Rate's* TPV would have passed muster had the verifier simply asked the customer whether he/she was "duly authorized by the telephone account owner to make changes to this telephone account."³⁸ CTI argues that the latter wording is similar to CTI's own verification language, where the Complainants were asked whether they "[had] the authority to make changes to [their] long distance service."³⁹

13. We disagree. The Bureau in *Reduced Rate* emphasized that Section 64.1120(c)(3)(iii) requires verifiers to "ask the separate, discrete question as to whether the person was authorized to make a carrier change,"⁴⁰ not merely whether the person was authorized to make a change in the *long distance service* as CTI claims. As with the verification in *Reduced Rate*, the verifications at issue here simply do not elicit this information.

14. Finally, CTI argues that, even if the Division had not previously ruled that CTI's earlier verification was inadequate evidence of a valid authorized carrier change, and even if the Bureau's decision in *Reduced Rate* is not dispositive, the verifications at issue here nonetheless fully comply with Section 64.1120(c)(3)(iii)⁴¹ and the *Fourth Report and Order* because the verifications show that the verifiers confirmed that the customer is authorized to make the carrier change.⁴² CTI states although the wording does not precisely "parrot" the Commission's regulation, the Commission has recognized that there is no specific incantation that verifiers must recite.⁴³ CTI asserts that its verification is consistent with the requirements of Section 64.1120(c)(3)(iii) and the *Fourth Report and Order*.⁴⁴

15. We disagree. 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

³⁶ See 47 C.F.R. 64.1120 (c)(3)(iii).

³⁷ See *Reduced Rate Long Distance*, 23 FCC Rcd 11506 (2008), *aff'd* 24 FCC Rcd 2496 (2009) (*Reduced Rate*).

³⁸ See *Petition* at 8.

³⁹ *Id.*

⁴⁰ See *Reduced Rate*, 24 FCC Rcd at 2498-99.

⁴¹ 47 C.F.R. § 64.1120(c)(3)(iii).

⁴² See *Petition* at 9-10.

⁴³ *Id.*

⁴⁴ *Id.*

subscriber, [and] confirmation that the person on the call is authorized to make the *carrier change . . .*”⁴⁵ The Commission in the *Fourth Report and Order* indicated that “the record reflects that some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer . . . in ways that obscure the true purpose.”⁴⁶ The Commission specifically stated that it “seek[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.”⁴⁷ With respect to the TPVs at hand, 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*.

16. For the reasons stated above, we affirm the *Division Orders* and deny CTI’s *Petition*.

IV. ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, 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, 0.361, of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, that the *Petition for Reconsideration* filed by Consumer Telecom, Inc., on March 1, 2010, IS DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Mark Stone
Deputy Chief
Consumer & Governmental Affairs Bureau

⁴⁵ 47 C.F.R. § 64.1120(c)(3)(iii) (emphasis added).

⁴⁶ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

⁴⁷ *Id.* at 502, para. 20 (emphasis added).