

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

In the Matter of	)	
	)	
BullsEye Telecom, Inc.	)	IC No. 10-S2783004
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER ON RECONSIDERATION**

**Adopted: May 13, 2013**

**Released: May 13, 2013**

By the Acting Chief, Consumer and Governmental Affairs Bureau:

**I. INTRODUCTION**

1. In this Order on Reconsideration, we address a Petition for Reconsideration filed by BullsEye Telecom, Inc. (BullsEye), asking us to reconsider an order issued by our Consumer Policy Division (Division) finding that BullsEye changed 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 affirm that BullsEye violated the Commission's carrier change rules, and we deny BullsEye's request that we allow withdrawal of the slamming complaint and vacate the Division's findings.

**II. BACKGROUND**

2. Prior to enactment of Section 258 of the Communications Act of 1934,<sup>2</sup> 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

<sup>1</sup> See Petition for Reconsideration of BullsEye Telecom, Inc. (filed Jan. 4, 2011) (*Petition*), seeking reconsideration of *BullsEye Telecom, Inc.*, Order, 10-S2783004 (CGB Consumer Policy Div. 2010) (*Division Order*). In its petition, BullsEye states that the Federal Communications Commission (Commission) may address the January 4, 2011, filing as either an application for review or a petition for reconsideration. See Petition at 1, n.2. BullsEye also filed documents with the Commission stating that BullsEye had never been found to have "engaged in slamming of any kind." See Motion of BullsEye for Stay of Order Pending Petition for Review or Reconsideration, filed Dec. 17, 2010, at para. 7 ("the company has never been found to have engaged in slamming of any kind"); Response of BullsEye to Informal Complaint of [Complainant], filed Oct. 11, 2010, at 2 ("BullsEye has had no slamming allegations in connection with its large-company Corporate Advantage program and has never been determined to have engaged in slamming of any kind."). A search of our records by the Commission staff, however, revealed 15 slamming complaints against BullsEye that had been granted by the Commission prior to the instant *Division Order*. A March 26, 2013, filing by BullsEye avers that its earlier statements were intended to refer solely to the BullsEye Corporate Advantage Program. See Clarification of BullsEye Telecom, Inc. To Motion For Stay Of Order And Application For Review (filed March 26, 2013).

<sup>2</sup> 47 U.S.C. § 258.

toll service.<sup>3</sup> Section 258 of the Communications Act, adopted as part of the 1996 Telecommunications Act, prohibits slamming.<sup>4</sup> In December 1998, the Commission adopted rules implementing Section 258.<sup>5</sup> These rules specify 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.<sup>6</sup> The Commission stated that the rules were designed “to take the profit out of slamming”<sup>7</sup> and applied the rules to all wireline carriers.<sup>8</sup>

3. In relevant part, the rules require that a submitting carrier<sup>9</sup> follow specific verification steps to show subscriber consent before submitting or executing a carrier change.<sup>10</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>11</sup> 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.”<sup>12</sup>

4. The Commission also adopted rules governing subscriber liability for carrier charges when slamming has occurred.<sup>13</sup> If the subscriber has not already paid charges to the unauthorized carrier,

---

<sup>3</sup> 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, Report and Order, 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, Memorandum Opinion and Order, 101 FCC 2d 911, 101 FCC 2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</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 (1998).

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at 1512, para. 4; see also *id.* at 1518-19, para 13.

<sup>8</sup> See *id.* at 1560, para. 85. The Commission exempted CMRS providers from the verification requirements. See *id.* at 1560-61, para. 85.

<sup>9</sup> A “submitting carrier” is “generally any telecommunications carrier that requests on the behalf of a subscriber that the subscriber’s telecommunications carrier be changed, and seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.” 47 C.F.R. § 64.1100(a).

<sup>10</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 the Commission’s verification procedures).

<sup>11</sup> See *id.* § 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.

<sup>12</sup> *Id.* § 64.1120(c)(3)(iii).

<sup>13</sup> See *id.* §§ 64.1140, 64.1160-70.

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>14</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>15</sup>

5. The Commission has also established procedures for when the Commission will resolve complaints and when states will resolve complaints. Specifically, in its First Order on Reconsideration, the Commission stated that states shall have primary responsibility for administering the Commission's slamming rules, but that a complainant from a state that has "opted-in" to enforce the Commission's slamming rules may expressly indicate that it wishes to have the Commission resolve its complaint.<sup>16</sup> The Commission also stated that it would not "adjudicate a complaint based on an allegation of slamming while the complainant has a complaint arising from the same set of facts pending before a state commission that has opted to administer [the Commission's] slamming rules."<sup>17</sup>

6. Complainant originally filed an informal complaint with the Commission on July 8, 2009.<sup>18</sup> Commission staff informed Complainant that the Commission generally would defer to the Florida Public Service Commission (PSC) because Complainant's headquarters are in Florida, one of many states that have opted-in to enforce the Commission's slamming rules.<sup>19</sup> Complainant then filed the complaint with the Florida PSC, which examined the Letter of Agency (LOA) and determined that BullsEye acted in good faith in relying on the LOA.<sup>20</sup> Complainant replied to the Florida PSC and called into question several of its findings.<sup>21</sup> The Florida PSC responded that, because Complainant was a commercial and not a residential subscriber, the Florida PSC did "not have statutory authority to legally rule on this matter" and could not "take any legal action to resolve [the] complaint."<sup>22</sup> The Florida PSC recommended that Complainant file its complaint against BullsEye with the Commission,<sup>23</sup> which it did

---

<sup>14</sup> 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).

<sup>15</sup> See *id.* § 64.1170.

<sup>16</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158, 8172, para. 28 (2000).

<sup>17</sup> *Id.*

<sup>18</sup> See E-mail correspondence of July 8, 2009 (Response of BullsEye to Informal Complaint at Exhibit 1 (Oct. 11, 2010)).

<sup>19</sup> See *id.* When the Commission receives a complaint from an "opt-in" state, it is automatically forwarded to that state's PSC.

<sup>20</sup> See May 18, 2010, Letter from Rick Moses, Florida PSC, to Complainant (stating, in part: "In your complaint, you allege that the document is forged and that no one from [complainant organization] authorized the change in service. However, because the document was sent from a facsimile number from [complainant branch office], it appears that Bulls[E]ye Telecom has acted in good faith relying on the document provided to them.").

<sup>21</sup> Undated letter from Complainant to Rick Moses, Chief, Bureau of Service Quality, Florida PSC.

<sup>22</sup> E-mail from Rick Moses, Florida PSC, to Complainant (Aug. 23, 2010).

<sup>23</sup> *Id.*

on August 23, 2010.

7. Because the Florida PSC had first tried to resolve the matter but subsequently declined to reach the merits of the slamming complaint for lack of statutory authority, the Commission exercised its authority to decide the complaint alleging that BullsEye had changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant.<sup>24</sup> Pursuant to Sections 1.719 and 64.1150<sup>25</sup> of the Commission's rules, the Division notified BullsEye of the complaint.<sup>26</sup> In response, BullsEye stated that authorization was received and confirmed when an LOA was signed and processed.<sup>27</sup> The Division reviewed the LOA. The Division stated that the LOA did not contain a listing of the telephone numbers to be switched, as required by the Commission's rules.<sup>28</sup> As a result, the Division found that BullsEye's actions violated the Commission's carrier change rules.<sup>29</sup> On January 4, 2011, BullsEye sought reconsideration of the *Division Order*.<sup>30</sup>

8. On August 22, 2012, 20 months after the Division Order was issued, Complainant notified the Commission that it wished to withdraw its August 23, 2010, complaint alleging that BullsEye changed its telecommunications service without authorization.<sup>31</sup> Complainant further requested that the Commission dismiss with prejudice all complaints filed by Complainant against BullsEye, vacate the *Division Order*, and close all related proceedings.<sup>32</sup>

9. On August 31, 2012, BullsEye notified the Commission that it wished to conditionally withdraw its January 4, 2011, Petition for Reconsideration of the *Division Order*.<sup>33</sup> BullsEye noted the August 22, 2012, withdrawal request of Complainant and requested that, upon the Commission's grant of the relief requested by Complainant, the Commission consider BullsEye's application for review withdrawn.

10. The Commission has received a copy of the Settlement Agreement and Mutual Release entered into by Complainant and BullsEye in August 2012.<sup>34</sup> The document indicates that the parties

---

<sup>24</sup> Informal Complaint No. IC 10-S2783004, filed Aug. 23, 2010.

<sup>25</sup> 47 U.S.C. § 1.719, 47 C.F.R. § 64.1150.

<sup>26</sup> See Notice of Informal Complaint No. 10-S2783004 to BullsEye from the Deputy Chief, Consumer Policy Division, CGB, dated Sept. 9, 2010.

<sup>27</sup> See Response of BullsEye to Informal Complaint at 2 (Oct. 11, 2010).

<sup>28</sup> *Division Order* at 3, para. 4. See 47 C.F.R. § 64.1130(e)(1).

<sup>29</sup> *Id.*

<sup>30</sup> See *Petition*.

<sup>31</sup> [Complainant's] Withdrawal of Slamming Complaint and Request for Vacatur of Consumer Policy Division Order (Aug. 22, 2012).

<sup>32</sup> *Id.*

<sup>33</sup> BullsEye Conditional Withdrawal of Application for Review of Consumer Policy Division Order (Aug. 31, 2012).

<sup>34</sup> Settlement Agreement and Mutual Release between [Complainant] and BullsEye Telecom, Inc. (Aug. 2012).

resolved a pending lawsuit filed in the State of Florida Circuit Court.<sup>35</sup> The parties also agreed that Complainant “shall withdraw its complaint in the FCC Action, with prejudice, which withdrawal will include a retraction of the slamming allegations made in the complaint filed by [Complainant] in the FCC Action, and consent to vacate the Order of the Deputy Chief, Consumer Policy Division, Consumer and Governmental Affairs Bureau, released December 6, 2010.”<sup>36</sup> BullsEye’s withdrawal of its Petition for Reconsideration is also part of the Settlement Agreement.<sup>37</sup>

### III. DISCUSSION

11. Based on the record before us, we affirm the *Division Order* on the merits. In addition, we deny BullsEye’s petition and decline the request to withdraw the slamming complaint and the request to vacate the *Division Order*.

#### A. Petition for Reconsideration

12. We affirm the *Division Order* and find that BullsEye violated the Commission’s carrier change rules because its LOA did not comply with Commission requirements. In its Petition for Reconsideration, BullsEye argues that the Division erroneously failed to dismiss the Informal Complaint, which BullsEye alleges was the same complaint investigated and resolved by the Florida PSC.<sup>38</sup> Both in response to the Informal Complaint and in its Petition, BullsEye asserts that jurisdiction over the complaint lies with the Florida PSC, and that the Florida PSC previously determined that BullsEye did not slam Complainant.<sup>39</sup> We disagree with BullsEye’s contention that the Florida PSC determined that no slam occurred. To the contrary, although the Florida PSC first opined that BullsEye had acted in good faith in relying on the LOA,<sup>40</sup> it subsequently expressly stated that it did not have authority to resolve the slamming matter.<sup>41</sup> Consistent with the First Order on Reconsideration,<sup>42</sup> Complainant then filed its complaint with the Commission. Thereafter, in reasonable reliance upon the Florida PSC’s assertion that it lacked jurisdiction over the complaint, the Division adjudicated the complaint. Because the Florida PSC had declined to further consider the complaint, the Division’s decision was not a “complaint arising from the same set of facts pending before a state commission.”<sup>43</sup> Moreover, if the Division had not adjudicated the Informal Complaint, Complainant would have had no remaining forum in which to bring its complaint. We also note that the *Division Order* is not inconsistent with the Florida PSC’s statement that BullsEye had no reason to believe the LOA was forged.

<sup>35</sup> State of Florida Circuit Court for the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Case No. 50 2010 CA 018273 XXXX MB.

<sup>36</sup> Settlement Agreement and Mutual Release, at para. 3.

<sup>37</sup> *Id.*

<sup>38</sup> *Petition* at 9.

<sup>39</sup> *See* BullsEye’s Response at 4-7.

<sup>40</sup> *See* May 18, 2010, Letter from Rick Moses, Florida PSC, to Complainant.

<sup>41</sup> *See supra* para. 6; E-mail from Rick Moses, Florida PSC, to Complainant (Aug. 23, 2010).

<sup>42</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158 (2000).

<sup>43</sup> *Id.* at 8172, para. 28.

13. Rather, the Division's finding that BullsEye slammed the Complainant was based solely on a determination that the LOA did not contain information required by Section 64.1130(e)(1) of the Commission's rules.<sup>44</sup> Because the Florida PSC declined to further consider the complaint or resolve the complaint under the Commission's slamming rules, it was not error for the Division to resolve the Informal Complaint filed with the Commission.<sup>45</sup>

14. BullsEye also argues that, by resolving this complaint rather than dismissing it, the Division committed prejudicial procedural error.<sup>46</sup> Specifically, BullsEye asserts that the Commission resolved issues not presented in the Informal Complaint. Specifically, BullsEye argues that the Informal Complaint referenced only long distance service, yet the *Division Order* pertained to both local and long distance service providers.<sup>47</sup> Additionally, BullsEye argues that the Informal Complaint did not list the telephone numbers associated with the allegedly slammed lines, and therefore BullsEye did not have adequate notice of the allegations in the complaint.<sup>48</sup> We find BullsEye's contentions without merit.

15. The Informal Complaint contained several attachments, which were included with the September 9, 2010, Notice of Informal Complaint sent to BullsEye.<sup>49</sup> One attachment was a July 8, 2009, letter from Complainant to the Commission and the Florida PSC.<sup>50</sup> In that letter, Complainant named both its local and long distance service providers, stated that it was reporting "unauthorized switching of its telephone services to Bulls[E]ye," and further stated that "in no case is Bulls[E]ye [] authorized to provide local or long distance services" to any of Complainant's business locations.<sup>51</sup>

16. Therefore, contrary to BullsEye's argument that the Informal Complaint referenced only long distance service, the Informal Complaint referenced both local and long distance service providers, and alleged slamming of both services. Furthermore, BullsEye was notified by the September 9, 2010, Notice of Informal Complaint that the Informal Complaint pertained to both local and long distance services, and the Division did not err in resolving the complaint in reference to both. In response to BullsEye's argument that the Informal Complaint did not list the telephone numbers associated with the allegedly slammed lines and therefore BullsEye did not have adequate notice of the allegations in the

---

<sup>44</sup> 47 C.F.R. § 64.1130(e)(1).

<sup>45</sup> We make no finding of whether the Florida PSC had jurisdiction to adjudicate the complaint, but rely on the fact that the Florida PSC did not apply FCC rules pursuant to Section 258. Once the Florida PSC chose not to resolve the slamming complaint, under the First Order on Reconsideration, Complainant was entitled to "seek resolution of [its] slamming dispute by filing a complaint with this Commission." *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, First Order on Reconsideration, 15 FCC Rcd 8158, 8172, para. 27 (2000).

<sup>46</sup> *Petition* at 17.

<sup>47</sup> *Petition* at 18.

<sup>48</sup> *Petition* at 18.

<sup>49</sup> See Notice of Informal Complaint No. 10-S2783004 to BullsEye from the Deputy Chief, Consumer Policy Division, CGB, dated Sept. 9, 2010.

<sup>50</sup> July 8, 2009, letter from Complainant to Commission and Florida PSC at 1, attached to July 8, 2009, E-mail addressed to [slamming@fcc.gov](mailto:slamming@fcc.gov) and [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us).

<sup>51</sup> *Id.*

complaint, we note that Complainant attached to its Informal Complaint invoices from BullsEye.<sup>52</sup> These invoices contain an identifying code for each of Complainant's telephone lines for which BullsEye billed Complainant.<sup>53</sup> These invoices were also included as an attachment to the September 9, 2010, Notice of Informal Complaint.<sup>54</sup> The invoices containing identifying codes for each of the telephone lines switched are equivalent to a list of the telephone numbers associated with the allegedly slammed lines because they constitute sufficient information for BullsEye to have identified the telephone numbers associated with the allegedly slammed lines.<sup>55</sup> Because the Notice of Informal Complaint included information that was equivalent to a list of allegedly slammed telephone lines, BullsEye received adequate notice of allegations in the complaint. Consequently, the *Division Order* resolved issues raised in the Informal Complaint and BullsEye received notice of the allegations in the Informal Complaint; we find no prejudicial procedural error on these points. We therefore disagree with BullsEye that the Division committed prejudicial error because the Informal Complaint did allege changes in both local and long distance providers and listed the telephone numbers associated with the allegedly slammed lines.

17. Finally, BullsEye argues that the Division made erroneous findings of material fact—specifically, that the Division Order found that Complainant did not provide BullsEye with a list of telephone numbers for which service was to be switched.<sup>56</sup> BullsEye contends that this finding of material fact directly contradicts the Florida PSC's finding,<sup>57</sup> arguing that this error requires that the *Division Order* be vacated.<sup>58</sup> We disagree. The Florida PSC found only that the LOA "was sent from a facsimile number from" Complainant.<sup>59</sup> The *Division Order* is not inconsistent with this determination by the Florida PSC. Rather, the Division examined the contents of the LOA under the Commission's slamming rules and found that it did not meet the requirements of Section 64.1130(e)(1)<sup>60</sup> because the LOA did "not contain a listing of the telephone numbers to be switched, as required by our rules."<sup>61</sup> The *Division Order* and the Florida PSC's determinations are not contradictory, and therefore the *Division Order* did not make an erroneous finding of material fact.

#### **B. Request for Withdrawal and Vacatur**

18. As noted above, Complainant seeks to withdraw its complaint and asks that the Commission dismiss all complaints it filed against BullsEye, vacate the *Division Order*, and close all related proceedings. For the reasons stated below, we decline to dismiss the August 23, 2010, Complaint

---

<sup>52</sup> July 8, 2009, E-mail addressed to [slamming@fcc.gov](mailto:slamming@fcc.gov) and [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us).

<sup>53</sup> *Id.*

<sup>54</sup> See Notice of Informal Complaint No. 10-S2783004 to BullsEye from the Deputy Chief, Consumer Policy Division, CGB, dated Sept. 9, 2010.

<sup>55</sup> July 8, 2009, E-mail addressed to [slamming@fcc.gov](mailto:slamming@fcc.gov) and [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us).

<sup>56</sup> *Petition* at 20.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> Letter from Rick Moses, Chief, Bureau of Service Quality, Florida PSC, to Complainant (May 18, 2010).

<sup>60</sup> 47 C.F.R. § 64.1130(e)(1).

<sup>61</sup> *Division Order* at para. 4.

against BullsEye, to vacate the *Division Order*, and to close all related proceedings.

19. Consistent with the Supreme Court's decision in *U.S. Bancorp Mortgage v. Bonner Mall Partnership*,<sup>62</sup> the Commission has previously concluded that it should deny requests to vacate unless the parties meet the significant burden of demonstrating "some special circumstances beyond the mere fact that the case has been settled."<sup>63</sup> Those special, or "exceptional circumstances[,] do not include the mere fact that the settlement agreement provides for vacatur."<sup>64</sup> The Commission has stated that "[t]he mere fact that the settlement agreement [concluded in by both parties] provides for vacatur is not sufficient reason by itself for us to take such action."<sup>65</sup>

20. Furthermore, the "social value" of the decision as precedent, which was "created at cost to the public," should not "be a bargaining chip in the process of settlement."<sup>66</sup> The public has an interest in the orderly operation of the decisional process, and this factor must be considered in determining whether to grant vacatur.<sup>67</sup> According to *Memorial Hospital of Iowa County*, "[t]he precedent, a public act of a public official, is not the parties' property."<sup>68</sup> Rather, it may affect third parties through its persuasive force as precedent, and it may save other complainants and the Commission time in future complaints; some of its force would remain as long as it was available to read.<sup>69</sup> Because the *Division Order* may affect third parties as precedent and save other complainants and the Commission time in the future, and because the parties have not alleged or established the requisite special circumstances, we decline to vacate the *Division Order*.<sup>70</sup>

21. A settlement between the Complainant and the alleged slammer also affects the authorized carrier. In this case, there is no indication that the authorized carrier's interests have been considered. The authorized carrier has an interest in the monies it is owed under our rules.<sup>71</sup> According

---

<sup>62</sup> 513 U.S. 18, 29 (1994) (*U.S. Bancorp Mortgage*) (requiring "exceptional circumstances" to justify vacatur of a judgment under review due to settlement).

<sup>63</sup> *Cavalier Telephone, LLC v. Virginia Electric and Power Company*, 17 FCC Rcd 24414, 24419-20, para. 16 (citing *Applications of Crystal Communications, et al.*, Order, 12 FCC Rcd 2149, 2151, para. 6 (1997)).

<sup>64</sup> *U.S. Bancorp Mortgage*, 513 U.S. at 29.

<sup>65</sup> *Sprint Communications Co. LP v. Bell Telephone Co.*, 11 FCC Rcd 5245, 5245 para. 2 (1996) (internal quotation marks omitted) (alteration in original).

<sup>66</sup> *Memorial Hospital of Iowa County, Inc.*, 862 F.2d 1299, 1302 (7th Cir. 1988).

<sup>67</sup> See *Cisco Systems, Inc. v. Telcordia Technologies, Inc.*, 590 F.Supp.2d 828, 830 (E.D. Tex. 2008). *Cisco Systems* sets forth four factors, derived from *U.S. Bancorp Mortgage*, that courts have considered when analyzing whether they should grant vacatur. Those factors are: "[t]he public interest in the orderly operation of the federal judicial system," "[t]he parties' desire to avoid any potential preclusive effect," "[t]he court's resources that will be expended if the case continues," and "[t]he parties' interest in conserving their resources." *Id.*

<sup>68</sup> *Memorial Hospital of Iowa County, Inc.*, 862 F.2d at 1302.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See 47 C.F.R. § 64.1160 (setting forth absolution procedures where the subscriber has not paid charges); 47 C.F.R. § 64.1170 (establishing reimbursement procedures where the subscriber has paid charges). In the course of these proceedings, the Commission instructed BullsEye and Complainant to contact the authorized carrier to ascertain its stance regarding the settlement between Complainant and BullsEye. On October 5, 2012, BullsEye (continued....)



to the *Division Order*, BullsEye was required to pay the authorized carrier an amount equal to 150% of all charges paid by the subscriber, of which the authorized carrier would refund or credit to Complainant 50% of all charges paid by Complainant to BullsEye. “The fact that a carrier has chosen to attempt to appease a customer does not alter its statutory liability . . . to the authorized carrier.”<sup>72</sup>

22. For the reasons stated above, we affirm the *Division Order* and deny BullsEye’s Petition. We also deny the requests to withdraw the original complaint and to vacate the *Division Order*.

#### IV. CONCLUSION AND ORDERING CLAUSES

23. 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, 1.719, and 64.1130(e)(1) of the Commission’s rules, 47 C.F.R. §§ 1.106, 1.719, 64.1130(e)(1), and authority delegated by Sections 0.141 and 0.361 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, the Petition for Reconsideration filed by BullsEye on January 4, 2011, IS DENIED.

24. IT IS FURTHER ORDERED that the requests to withdraw and dismiss with prejudice the original complaint, to close all related proceedings, and to vacate the December 6, 2010, Order ARE DENIED.

25. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Acting Chief  
Consumer and Governmental Affairs Bureau

(Continued from previous page) \_\_\_\_\_

informed the Commission that it would not be communicating with the authorized carrier, and that it saw no reason to do so because Complainant’s complaint had been withdrawn. According to BullsEye, because there was no dispute remaining before the Commission, there was no reason to look for additional concerns or concerned parties in order to solicit some sort of dispute. BullsEye fails to recognize that, despite Complainant’s attempted withdrawal of the complaint, the *Division Order* remains in effect. Consequently, the Commission’s finding that BullsEye slammed Complainant remains valid. The parties’ settlement does not negate this determination. Because a slam occurred, the authorized carrier was deprived of revenue it otherwise would have received. Therefore, we recognize a need to protect the authorized carrier’s legitimate stake in these proceedings.

<sup>72</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 18 FCC Red 5099, 5130, para. 81 (2003).