

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

In the Matter of	)	
	)	
Birch Communications	)	IC No. 11-S3272136
	)	
Complaint Regarding	)	
Unauthorized Change of	)	
Subscriber's Telecommunications Carrier	)	

**ORDER**

**Adopted: May 29, 2013**

**Released: May 30, 2013**

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider the complaint<sup>1</sup> alleging that Birch Communications (Birch) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.<sup>2</sup> We conclude that Birch's actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).<sup>3</sup> Section 258 prohibits the practice of

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<sup>1</sup> Informal Complaint No. IC 11-S3272136, filed November 14, 2011.

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

<sup>3</sup> 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *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 Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, 18 FCC Rcd 10997 (2003); Fourth Report and Order, 23 FCC Rcd 493 (2008). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. 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 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

“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>4</sup> In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.<sup>6</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtains 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>7</sup>

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, 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>8</sup> Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.<sup>9</sup> Carriers should note that our actions in this Order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.<sup>10</sup>

4. We received Complainant’s complaint on November 14, 2011, alleging that Complainant’s telecommunications service provider had been changed from Verizon to Cordia Communications (Cordia) without Complainant’s authorization but that Cordia went out of business and Birch took over the account.<sup>11</sup> Pursuant to Sections 1.719 and 64.1150 of our

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<sup>4</sup> 47 U.S.C. § 258(a).

<sup>5</sup> See 47 C.F.R. § 64.1120.

<sup>6</sup> 47 U.S.C. § 258(a).

<sup>7</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>8</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. *Id.*

<sup>9</sup> See 47 C.F.R. §§ 64.1140, 64.1170.

<sup>10</sup> See 47 U.S.C. § 503.

<sup>11</sup> Attached to the complaint is a telephone bill from Birch.

rules,<sup>12</sup> we notified Birch of the complaint, and Birch responded on December 15, 2011.<sup>13</sup> Birch stated that it purchased a portion of Cordia's customer base, including Complainant's phone line, that it obtained Complainant's phone line on October 13, 2011. Birch also states that the transfer to Birch from Cordia was pursuant to FCC approval in WC Docket No. 11-114.<sup>14</sup> Birch further states that it sent an invoice to Complainant issuing credits for service for October 26 and 27, 2011, and listed the beginning balance from August and September invoices with Cordia. Birch denies Complainant's slamming allegation.

5. The Commission's carrier change rules allow a telecommunications provider to acquire all or part of another carrier's subscriber base without obtaining each subscriber's authorization and verification provided that the acquiring carrier comply with our streamlined procedures.<sup>15</sup> To comply with these procedures, the acquiring carrier must file with the Commission's Office of the Secretary, no later than 30 days before the planned transfer, a letter notification in CC Docket 00-257 that meets the requirements listed in Section 64.1120 (e)(1) of our rules, including proper customer notice.<sup>16</sup> On September 12, 2011, Birch filed a letter notification with the Commission regarding acquisition of the subscriber base of various carriers, including Cordia.<sup>17</sup>

6. We find that the subscriber notification letter filed by Birch is deficient because the letter notification did not contain "the rates, terms, and conditions of the service(s) to be provided by the acquiring carrier upon the subscriber's transfer to the acquiring carrier, and the means by which the acquiring carrier will notify the subscriber of any change(s) to these rates, terms, and conditions."<sup>18</sup> The Commission, in the *Streamlining Order*, explained that the letter notification must contain "detailed information" as to the rates, terms and conditions of the services the acquiring carrier will provide.<sup>19</sup> Subsequently, the Commission explained that

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<sup>12</sup> 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).

<sup>13</sup> Birch's Response to Informal Complaint No. IC 11-S3272136, received December 15, 2011.

<sup>14</sup> See *Public Notice*, Notice of Domestic Section 214 Authorization Granted, WC Docket Nos. 11-114, 26 FCC Rcd 14161 (2011). The Wireline Competition Bureau granted the application pursuant to the Commission's streamlined procedures for domestic section 214 transfer of control applications, 47 C.F.R. § 63.03.

<sup>15</sup> See 47 C.F.R. § 64.1120(e).

<sup>16</sup> See 47 C.F.R. § 64.1120(e)(1).

<sup>17</sup> Birch's notification to the FCC in CC Docket 00-257 was filed with the Commission on September 12, 2011.

<sup>18</sup> 47 C.F.R. § 64.1120(e)(3)(ii). See also *Metropolitan Telecommunications*, 24 FCC Rcd 2504 (2009) (*Metropolitan*). We note that the copy of the customer notification letters sent to affected subscribers is a joint letter from Cordia and Birch.

<sup>19</sup> See *Streamlining Order*, 16 FCC Rcd 11218, 11227 at para. 22. The Commission has also reiterated that acquiring carriers are required to provide affected subscribers with "detailed information concerning the rates, terms and conditions of the service(s) to be provided to transferred customers." See *2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*,

providing such detail in the advance notice “will enable transferred subscribers to make a timely, informed decision regarding their ultimate choice of service providers.”<sup>20</sup>

7. Moreover, the provision of detailed information ensures that subscribers can be certain of the rates, terms, and conditions the acquiring carrier will impose. For subscribers who do not retain bills or copies of their current service provider's terms and conditions, it might be difficult for them to confirm their rates, terms, and conditions after the transfer takes place — particularly if the carrier transferring the subscribers is no longer in business. In the *Commission Reconsideration Order*, the Commission stated that, “[b]ecause the acquiring carrier is no longer required to obtain each individual subscriber’s consent [in the context of the streamlined procedures for transfer], it is critical that the advance written notice contain at least some level of detail as to the rates, terms and conditions of the services the acquiring carrier will provide.”<sup>21</sup> Birch’s letter notification to the subscribers stated that, “You will retain all other service rates, features, terms, and conditions of service and your telephone number.”<sup>22</sup> The Bureau previously found that a carrier’s statement that Complainants’ rates will “stay the same” does not satisfy the “detailed information” requirement concerning the acquiring carrier’s rates, terms and conditions.<sup>23</sup> Thus, Birch’s letter notification did not contain the *detailed* information required by the Commission.<sup>24</sup> We find, therefore, that Birch’s streamlined procedure filing was deficient, and we discuss Birch’s liability below.<sup>25</sup>

8. Birch must remove all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission’s

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First Order on Reconsideration in CC Docket No. 00-257 and Fourth Order on Reconsideration in CC Docket No. 94-129, 19 FCC Rcd 13432, 13439 at para. 18 (2004) (*Commission Reconsideration Order*).

<sup>20</sup> See *Commission Reconsideration Order*, 19 FCC Rcd 13432, 13439 at para.18. (requiring at least some level of detail as to the rates, terms and conditions of the services the acquiring carrier will provide). The Commission also stated that it is difficult to imagine how a subscriber could make this sort of [carrier selection] decision without knowing, for example, the rates the acquiring carrier will charge. See *id.*

<sup>21</sup> See *id.*

<sup>22</sup> See the subscriber letter notifications attached to Birch’s September 12, 2011 filing. The two sentences immediately preceding the above quoted sentence stated, “There may, however, be other changes to your service plan based on Birch’s unique billing systems (e.g., customers currently utilizing a message or measured local service plan may be switched to a flat rate plan). In those cases, Birch will transition you in a neutral manner and with no increase to your regular monthly recurring charges.”

<sup>23</sup> See *United Systems Access Telecom, Inc.*, Order on Reconsideration, 19 FCC Rcd 4528, 4530 at para 5. (2004) (finding that a “customer notice letter” which states that a subscriber’s rates, terms and conditions will stay the same did not satisfy the Commission’s “detailed information” requirement).

<sup>24</sup> See *Commission Reconsideration Order*, 19 FCC Rcd 13432, 13439 at para. 18; see *Metropolitan, supra*.

<sup>25</sup> If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission’s rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant’s informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

liability rules.<sup>26</sup> We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither Complainant's authorized carrier nor Birch may pursue any collection against Complainant for those charges.<sup>27</sup> Any charges imposed by Birch on the subscriber for service provided after this 30-day period shall be paid by the subscriber to their authorized carrier at the rates the subscriber was paying to their authorized carrier at the time of the unauthorized change.<sup>28</sup>

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 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed by Complainant against Birch Communications IS GRANTED.

10. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and Verizon nor Birch may pursue any collection against Complainant for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson, Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

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<sup>26</sup> See 47 C.F.R. § 64.1160(b).

<sup>27</sup> See 47 C.F.R. § 64.1160(d).

<sup>28</sup> See 47 C.F.R. §§ 64.1140, 64.1160.