Before the

Federal Communications Commission

**Washington, D.C. 20554**

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| In the Matter of  Birch Communications  Complaints Regarding  Unauthorized Change of  Subscribers’ Telecommunications Carrier | **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)**  **)** | Complaint Nos. 684301  815575  825550  835060  836363  857988  947903  977137  982478  1024439  1034644  1083103  1174884  1205782  1312985  1315995  1367768 |
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**ORDER**

**Adopted: April 30, 2018 Released: May 1, 2018**

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

1. In this Order, we consider complaints[[1]](#footnote-3) alleging that Birch Communications (Birch) changed Complainants’ telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission’s rules.[[2]](#footnote-4) We conclude that Birch has responded fully to the Complainants’ complaints and has taken action to resolve the complaints.
2. Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act),[[3]](#footnote-5) prohibits 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.[[4]](#footnote-6) The Commission’s implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[[5]](#footnote-7) 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) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an appropriately qualified independent third party to verify the subscriber's order.[[6]](#footnote-8) The Commission also has adopted rules to limit the liability of subscribers when a carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.[[7]](#footnote-9)
3. We received Complainants’ complaints alleging that Complainants’ telecommunications service providers had been changed without Complainants’ authorization.[[8]](#footnote-10) Pursuant to Sections 1.719 and 64.1150 of our rules,[[9]](#footnote-11) we notified Birch of the complaints and Birch responded.[[10]](#footnote-12) Birch has fully absolved Complainants of all charges assessed by Birch in a manner consistent with the Commission’s liability rules.[[11]](#footnote-13) Based on the information before us, we find that the complaints referenced herein have been resolved.[[12]](#footnote-14)
4. 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 CFR §§ 0.141, 0.361, 1.719, the complaints against Birch Communications are RESOLVED.
5. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson

Deputy Chief

Consumer Policy Division

Consumer and Governmental Affairs Bureau

APPENDIX

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| COMPLAINT NUMBER | DATE OF COMPLAINT | DATE OF CARRIER RESPONSE |
| 684301  815575  825550  835060  836363  857988  947903  977137  982478  1024439  1034644  1083103  1174884  1205782  1312985  1315995  1367768 | December 1, 2015  February 17, 2016  February 22, 2016  February 26, 2016  February 27, 2016  March 10, 2016  May 3, 2016  May 13, 2016  May 17, 2016  June 7, 2016  June 14, 2016  August 15, 2016  September 2, 2016  September 19, 2016  November 13, 2016  November 15, 2016  December 27, 2016 | January 7, 2016  March 19, 2016  March 28, 2016  March 31, 2016  March 31, 2016  April 11, 2016  June 8, 2016  May 17, 2016  June 8, 2016  June 30, 2016  July 20, 2016  December 7, 2016  November 22, 2016  October 19, 2016  December 6, 2016  December 7, 2016  January 30, 2017 |
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1. *See* Appendix. [↑](#footnote-ref-3)
2. *See* 47 CFR §§ 64.1100 – 64.1190. [↑](#footnote-ref-4)
3. 47 U.S.C. § 258(a). [↑](#footnote-ref-5)
4. *Id.* [↑](#footnote-ref-6)
5. *See* 47 CFR § 64.1120. [↑](#footnote-ref-7)
6. *See* 47 CFR § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 CFR § 64.1130. [↑](#footnote-ref-8)
7. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. 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. *See* 47 CFR §§ 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.* Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. *See* 47 CFR §§ 64.1140, 64.1170. [↑](#footnote-ref-9)
8. *See* Appendix. [↑](#footnote-ref-10)
9. 47 CFR § 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). [↑](#footnote-ref-11)
10. *See* Appendix. [↑](#footnote-ref-12)
11. *See* 47 CFR § 64.1160. In December 2016 the Commission’s Enforcement Bureau entered into a Consent Decree with Birch pursuant to which Birch absolved the complainants. *See* *Birch Communications, Inc*., Order, 31 FCC Rcd 13510 (EB 2016). This order is not intended to alter or contradict the consent decree’s terms, including with respect to liability. [↑](#footnote-ref-13)
12. If any Complainant is unsatisfied with the resolution of its complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission’s rules. *Id*. § 1.721. Such filing will be deemed to relate back to the filing date of such 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 such Complainant. *See* *id*. § 1.719. [↑](#footnote-ref-14)