

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

In the Matter of)	
)	
TeleCircuit)	Complaint Nos. 1541963
)	1638031
Complaints Regarding)	
Unauthorized Change of)	
Subscribers' Telecommunications Carrier)	
)	

ORDER

Adopted: June 20, 2018

Released: June 21, 2018

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

1. In this Order, we consider the complaints¹ alleging that TeleCircuit changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.² We conclude that TeleCircuit's actions violated the Commission's carrier change rules and we grant Complainants' complaints.

2. Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act),³ 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 The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ 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 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

¹See Appendix.

² See 47 CFR §§ 64.1100 – 64.1190.

³ 47 U.S.C. § 258(a).

⁴ *Id.*

⁵ See 47 CFR § 64.1120.

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.

authorization.⁷

3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.⁸ Pursuant to Sections 1.719 and 64.1150 of our rules,⁹ we notified TeleCircuit of the complaints. TeleCircuit has failed to respond to the complaints. The failure of TeleCircuit to respond or provide proof of verification is presumed to be clear and convincing evidence of violations¹⁰ Therefore, we find that TeleCircuit's actions resulted in violations of our carrier change rules and we discuss TeleCircuit's liability below.¹¹ We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional actions may be necessary.

4. Pursuant to Section 64.1170(b) our rules, TeleCircuit must forward to the authorized carriers an amount equal to 150% of all charges paid by the subscriber to TeleCircuit along with copies of any telephone bills issued from TeleCircuit to the Complainants.¹² Within ten days of receipt of this amount, authorized carriers shall provide a refund or credit to Complainants in the amount of 50% of all charges paid by Complainants to TeleCircuit. Complainants have the option of asking the authorized carriers to re-rate TeleCircuit's charges based on the authorized carriers rates and, on behalf of Complainants, seek from TeleCircuit, any re-rated amount exceeding 50% of all charges paid by Complainants to TeleCircuit. The authorized carriers must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to Complainants.¹³ If authorized carriers have not received the reimbursement required from TeleCircuit within 45days of the release of this Order, the authorized carriers must notify the Commission and Complainants accordingly. The authorized carriers also must notify the Complainants of his or her right to pursue a claim against TeleCircuit for a refund of all charges paid to TeleCircuit.¹⁴

5. 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 TeleCircuit Communications, ARE GRANTED.

6. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the

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.

⁸ *See* Appendix.

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).

¹⁰ *See* 47 C.F.R. § 64.1150(d).

¹¹ 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.

¹² *See* 47 C.F.R. § 64.1170(b)(1)(2).

¹³ *See* 47 C.F.R. § 64.1120(c)(3)(iii).

¹⁴ *See* 47 C.F.R. § 64.1170(e).

first thirty days after the unauthorized change occurred and TeleCircuit may not pursue any collection against Complainants for those charges.

7. 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

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER SERVE</u>
1541963	April 2, 2017	May 18, 2017
1638031	May 10, 2017	May 16, 2017