

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

In the Matter of)
)
GPSPS, Inc.) Complaint No. 224799
)
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 complaint¹ alleging that GPSPS, Inc. (GPSPS) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that GPSPS's actions violated the Commission's carrier change rules and we grant Complainant's complaint.

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

¹ Complaint No. 224799, filed April 8, 2015.

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 Complainant's complaint on April 8, 2015, alleging that Complainant's telecommunications service provider had been changed without Complainant's authorization.⁸ Pursuant to Sections 1.719 and 64.1150 of our rules,⁹ we notified GPSPS of the complaint. GPSPS has failed to respond to the complaint. The failure of GPSPS to respond or provide proof of verification is presumed to be clear and convincing evidence of a violation¹⁰ Therefore, we find that GPSPS's actions resulted in a violation of our carrier change rules and we discuss GPSPS's liability below.¹¹ We also will forward a copy of the record of this proceeding to our Enforcement Bureau to determine what additional action may be necessary.

4. Pursuant to Section 64.1170(b) our rules, GPSPS must forward to AT&T an amount equal to 150% of all charges paid by the subscriber to GPSPS along with copies of any telephone bills issued from GPSPS to the Complainant.¹² Within ten days of receipt of this amount, AT&T shall provide a refund or credit to Complainant in the amount of 50% of all charges paid by Complainant to GPSPS. Complainant has the option of asking AT&T to re-rate GPSPS charges based on AT&T rates and, on behalf of Complainant, seek from GPSPS, any re-rated amount exceeding 50% of all charges paid by Complainant to GPSPS. AT&T must also send a notice to the Commission, referencing this Order, stating that it has given a refund or credit to Complainant.¹³ If AT&T has not received the reimbursement required from GPSPS within 45 days of the release of this Order, AT&T must notify the Commission and Complainant accordingly. AT&T also must notify the Complainant of his or her right to pursue a claim against GPSPS for a refund of all charges paid to GPSPS.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 complaint against GPSPS Communications, IS 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), Complainant are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and GPSPS may not pursue any collection against Complainant for those charges.

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 Notice of Informal Complaint No 224799 was electronically sent on April 10, 2015.

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).

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson
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Consumer Policy Division
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