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

In the Matter of Netcom Systems Group, LLC Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier	)))))))	Complaint No. 3366059

ORDER

Adopted: October 23, 2019 **Released: October 23, 2019**

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

1. In this Order, we consider a complaint alleging that Netcom Systems Group, LLC (Netcom) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant as required by the Commission's rules.[1] We find that Netcom's actions violated the Commission's slamming rules, and we therefore grant Complainant's complaint.

2. Section 258 of the Communications Act of 1934, as amended (the Act), 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.[2] The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.[3] Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that satisfies our rules; (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 order.[4] The Commission has also 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.[5]

[1] *See* Informal Complaint No. 3366059 (filed July 2, 2019); *see also* 47 CFR §§ 64.1100 – 64.1190.

[2] 47 U.S.C. § 258(a).

[3] *See* 47 CFR § 64.1120.

[4] *Id*. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

[5] These rules require the unauthorized 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 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. *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 id.* §§ 64.1140, 64.1170.

3. In June 2018, the Commission codified a rule to prohibit misrepresentations on sales calls to further reduce the incidence of slamming.[6] Under the revised rule, upon a finding of material misrepresentation during the sales call, the consumer's authorization to change carriers will be deemed invalid even if the carrier has some evidence of consumer authorization of a carrier switch, e.g., a third-party verification (TPV) recording. Sales misrepresentations may not be cured by a facially valid TPV.[7] The rule provides that a consumer's credible allegation of misrepresentation shifts the burden of proof to the carrier to provide evidence to rebut the consumer's claim regarding misrepresentation. The Commission made clear that an accurate and complete recording of the sales call may be the carrier's best persuasive evidence to rebut the consumer's claim that a misrepresentation was made on the sales call.[8]

4. We received Complainant's complaint alleging that Complainant's telecommunications service provider had been changed to Netcom without Complainant's authorization.[9] In the complaint, Complainant also alleges that Netcom's telemarketer contacted him "by phone in May, 2019 'informing' me that my phone provider (CenturyLink) had dropped long distance as a service and I had to sign up with a third party. They assured me that if I signed up with them, charges would be on my CenturyLink bill."[10] Complainant further states, ". . . I got both my CenturyLink bill and a bill from NetCom. NetCom was not listed on my CenturyLink Bill, but CenturyLink long distance was charged on that bill."[11]

5. Pursuant to our rules, we notified Netcom of the complaint.[12] Netcom responded to the complaint, stating that authorization was received and confirmed through a TPV.[13] Netcom also states that "Netcom requires that any company that markets on behalf of Netcom must strictly follow Netcom's anti-slamming policies and only utilize scripts authorized by Netcom."[14] Pointing to the recorded statements in the TPV, Netcom argues that such statements are "strong evidence contradicting [Complainant's] claim he was told that NetCom was replacing CenturyLink because CenturyLink was ceasing long distance service."[15] Netcom further states, "[a]t no point during either verification recording did [Complainant] ask any sort of question about CenturyLink or say anything inconsistent with a man

[6] *Id*. § 64.1120(a)(1)(i)(A).

[7] *See Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges*, 33 FCC Rcd 5773, 5778-80, paras. 17-19 (2018) (*2018 Slamming Order*); 47 CFR § 64.1120(a)(1)(i)(A). The revised rule became effective on August 16, 2018. *See Consumer and Governmental Affairs Bureau Announces August 16, 2018 Effective Date for Slamming and Cramming Rules*, CG Docket No. 17-169, Public Notice, DA 18-747 (rel. July 19, 2018).

[8] *See 2018 Slamming Order*, 33 FCC Rcd at 5781, para. 23. The Commission also stated that a carrier is uniquely positioned via its access to sales scripts, recordings, training, and other relevant materials relating to sales calls to proffer evidence to rebut a consumer's claims. *Id*.

[9] *See* Informal Complaint No. 3366059.

[10] *Id*.

[11] *Id*.

[12] 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). The Consumer Policy Division (Division) served the complaint on Netcom on July 2, 2019, and again on September 18, 2019, to ensure that Netcom had a full opportunity to respond to Complainant's allegations of misrepresentation.

[13] Netcom Response to Informal Complaint No. 3366059 (filed July 29, 2019) (Netcom Response 1); *see also* Netcom Response to Informal Complaint No. 3366059 (filed Oct. 18, 2019) (Netcom Response 2).

[14] Netcom Response 1.

[15] Netcom Response 2 at 2.

who knowingly agreed to switch carriers."[16]

6. In addition to the TPV recording (which included a "call-back" immediately following the TPV), Netcom provided a "record" of a call Netcom claims it made the following day to confirm Complainant's order and a copy of the script used on that call. Netcom also provided a copy of the welcome letter it states was sent to Complainant following the order. Netcom did not, however, provide the sales call recording or any other evidence related to the sales call, such as the script used by the telemarketer who spoke to Complainant, to rebut Complainant's claim of misrepresentation.[17]

7. The Division carefully reviewed all the evidence in the record provided by both the Complainant and Netcom. Based on the evidence in the record, we find Complainant's allegation of a sales call misrepresentation to be credible due to its specificity and consistency with other complaints we have reviewed. Complainant does not dispute that he agreed to the switch during the verification process, but that he did so as a result of the misrepresentations made by Netcom's telemarketer during the sales call. As the Commission stated in the *2018 Slamming Order*, "[w]hen a consumer's decision to switch carriers is predicated on false information provided in a sales call, that consumer's authorization to switch carriers can no longer be considered binding."[18] We further find that Netcom has failed to provide persuasive evidence to rebut Complainant's claim and therefore that Complainant's authorization to change carriers is invalid. We therefore find that Netcom's actions resulted in an unauthorized change in Complainant's telecommunications service provider, as defined by the rules, and we discuss Netcom's liability below.[19]

8. Netcom 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 liability rules.[20] 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 the Complainant's authorized carrier nor Netcom may pursue any collection against Complainant for those charges.[21] Any charges imposed by Netcom on the subscriber for service provided after this 30-day period shall be paid by the subscriber at the rates the subscriber was paying to his/her authorized carrier at the time of the unauthorized change.[22]

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 CFR §§ 0.141, 0.361, 1.719, the complaint filed against Netcom Systems Group, LLC IS GRANTED.

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[16] *Id*.

[17] Netcom argues that it should not be penalized for the failure to record the sales call and that the Commission's verification requirements do not require sales calls to be recorded. *See* Netcom Response 2 at 3.

[18] *2018 Slamming Order*, 33 FCC Rcd at 5779, para. 18 (citing *Advantage Forfeiture Order*, 32 FCC Rcd 3723, 3725-30, paras. 7-13 (2017) (finding that the carrier's TPV recordings did not disprove that unlawful misrepresentations were made during the telemarketing calls and further, that questions posed during the separate TPV calls did not cure those misrepresentations)).

[19] If Complainant is unsatisfied with the resolution of the complaint, the Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 CFR § 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 id.* § 1.719.

[20] *See id.* § 64.1160(b).

[21] *See id.* § 64.1160(d).

[22] *See id.* §§ 64.1140, 64.1160.

10. IT IS FURTHER ORDERED that, pursuant to section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), the Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that Netcom Systems Group, LLC may not pursue any collection against Complainant for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy Stevenson
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