

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

In the Matter of)
Consumer Telcom, Inc.) Complaint Nos. 09-S002462
Complaints Regarding) 09-S0296043
Unauthorized Change of) 09-S0296664
Subscriber's Telecommunications Carrier) 11-S3045251
) 12-S3389330
) 12-S3404325
) 12-S3461638
) 13-S3548579
) 13-S003703
) 13-S003712
) 13-S3607518
) 13-S3718342
) 13-S3754504
) 14-S003721

ORDER ON RECONSIDERATION

Adopted: March 29, 2019

Released: April 1, 2019

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

1. In this Order on Reconsideration, we address four petitions (collectively, Petitions) filed by Consumer Telcom, Inc. (CTI) asking us to reconsider fourteen Consumer Policy Division (Division) orders finding that CTI changed consumers' telecommunications service providers without proper authorization verified in accordance with the Commission's carrier change rules.1 On reconsideration, we affirm that CTI's actions violated the Commission's rules and deny the Petitions.2

II. BACKGROUND

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.3 The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent and follow specific

1 See Consumer Telcom, Inc.'s Petition for Reconsideration (filed April 27, 2010) (Petition 1); Consumer Telcom, Inc.'s Petition for Reconsideration (filed June 17, 2013) (Petition 2); Consumer Telcom, Inc.'s Petition for Reconsideration (filed August 19, 2013) (Petition 3); Consumer Telcom, Inc.'s Petition for Reconsideration (filed June 30, 2014) (Petition 4). The Petitions seek reconsideration of the Division orders referenced in the above-captioned proceedings. Each of CTI's Petitions makes the same arguments regarding the Division's findings and therefore we address all of them in this Order.

2 See 47 CFR §§ 64.1100-64.1190.

3 47 U.S.C. § 258(a).

verification procedures before a carrier change may occur.⁴ 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.⁵ If the carrier uses an independent third party to verify the subscriber's consent, the rules require, among other things, that the verifier elicit confirmation that "the person on the [verification] call is authorized to make the carrier change."⁶

3. In 2008, the Commission adopted the *Fourth Report and Order*, which, among other things, amended the third-party verification rules.⁷ There, the Commission required that "any description of the carrier change transaction . . . not be misleading" and emphasized that third-party verifiers must "convey explicitly that consumers will have authorized a carrier change, and not, for instance, an upgrade in existing service [or a] bill consolidation."⁸ The Commission explained that "[t]he record reflects that carriers using ambiguous language to describe the nature of the transaction may lead to consumer confusion concerning the true purpose of the solicitation call."⁹ The Commission further stated that "such practices are misleading and unreasonable, and warrant specific treatment in our rules."¹⁰

4. Fourteen consumers (Complainants) filed slamming complaints against CTI, each alleging that their telecommunications service providers had been changed to CTI without their authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules, the Division notified CTI of the complaints.¹² In its responses, CTI stated that the consumers' authorizations were received and confirmed through third-party verification recordings (TPVs).¹³ The Division reviewed the consumers' complaints, CTI's responses, and the TPVs in each case, and determined that CTI's actions violated the Commission's carrier change rules.¹⁴ Specifically, the Division stated that "[a] switch from one carrier to another carrier differs from merely making changes to the customer's long distance service" and

⁴ See 47 CFR § 64.1120.

⁵ See *id.* § 64.1120(c). Section 64.1130 of the Commission's rules details the requirements for letter of agency form and content for written or electronically signed authorizations. *Id.* § 64.1130.

⁶ *Id.* § 64.1120(c)(3)(iii).

⁷ See *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*, Fourth Report and Order, 23 FCC Rcd 493 (2008) (*Fourth Report and Order*). The revised verification requirements in Section 64.1120(c)(3)(iii) became effective on July 30, 2008.

⁸ See *Fourth Report and Order*, 23 FCC Rcd at 501-02, paras. 18-20; 47 CFR § 64.1120(c)(3)(iii).

⁹ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

¹⁰ *Id.*

¹¹ See Informal Complaint Nos. 09-S002462 (filed July 6, 2009); 09-S0296043 (filed June 9, 2009); 09-S0296664 (filed Aug. 5, 2009); 11-S3045251 (filed Mar. 24, 2011); 12-S3389330 (filed Apr. 26, 2012); 12-S3404325 (filed May 22, 2012); 12-S3461638 (filed Aug. 15, 2012); 13-S3548579 (filed Dec. 26, 2012); 13-S003703 (filed Nov. 26, 2013); 13-S003712 (filed Dec. 24, 2013); 13-S3607518 (filed Feb. 19, 2013); 13-S3718342 (filed Aug. 28, 2013); 13-S3754504 (filed Nov. 21, 2013); 14-S003721 (filed Jan. 10, 2014).

¹² See 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).

¹³ As discussed above, TPV is one method a carrier may use to verify and record a consumer's authorization to change his or her preferred long distance carrier. *Id.* § 64.1120(c)(3).

emphasized that “any description of the carrier change transaction . . . shall not be misleading.”¹⁵ CTI seeks reconsideration of the *Division Orders*.

III. DISCUSSION

5. Based on the record before us, we affirm the *Division Orders* and deny CTI’s Petitions. As discussed below, we find that CTI violated the Commission’s carrier change rules when, in each of the 14 cases, CTI’s verifier failed to confirm that the consumer was authorized to make a *carrier change* and used misleading language that obscured the true purpose of the call.¹⁶

6. In each TPV, CTI’s verifier asks the person on the call if they have the authority “to make changes to [their] long distance service.”¹⁷ Despite using this language, CTI argues that the verifications confirm that the consumers were authorized to make a carrier change.¹⁸ It acknowledges, however, that “the wording [of the TPV] does not precisely parrot the Commission’s pertinent regulation” and contends that the rules contain “no specific incantation the verifiers must recite.”¹⁹ While our rules do not outline the specific language that a TPV must include, Section 64.1120(c)(3)(iii) requires that all third-party verifiers “elicit, at a minimum the identity of the subscriber; [and] confirmation that the person on the call is authorized to make the *carrier change*”²⁰ The Commission specifically stated that it “seek[s] to ensure that verifiers confirm the consumer’s intent to receive service *from a different carrier*, regardless of whether that is phrased as a ‘change,’ a ‘switch,’ or any other non-misleading term.”²¹ In the TPVs at issue here, the verifier’s question — “[d]o you have authority to make changes to your long distance service?” — did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier*. It is well established that changing or upgrading service is not equivalent to changing carriers, and CTI’s TPV statements suggesting that it was seeking verification only for a change in “service” were misleading and violated Section 64.1120(c)(3).²²

7. CTI also argues that the Division should have viewed the verifications in their entirety and that instead, the Division “improperly analyzed a single question asked by CTI’s verifier.”²³ CTI

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¹⁴ See *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 2886 (CGB 2010); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 3202 (CGB 2010) (granting two complaints); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 7257 (CGB 2013) (granting three complaints); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 10325 (CGB 2013) (granting two complaints); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5787 (CGB 2014); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5800 (CGB 2014) (granting five complaints) (collectively, *Division Orders*).

¹⁵ See *Division Orders* at para. 4. In one of the orders, the Division noted that “the purpose of a TPV recording is to verify a subscriber’s intent to change their carrier.” See *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5800, 5802, para. 4.

¹⁶ In one case, the Division found that CTI failed to provide a TPV or any other proof of authorization and for that reason, CTI violated the carrier change rules. See Informal Complaint No. 13-S003703. CTI did not, however, dispute the Division’s finding in its Petitions.

¹⁷ See TPVs and TPV transcripts provided with CTI’s complaint responses. In some of the TPVs, the verifier states that the purpose of the call was “to confirm the change in long distance service to Consumer Telcom as your long distance carrier,” which the Division similarly found to be misleading and in violation of the rules. See *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5800, 5802, para. 4.

¹⁸ See, e.g., Petition 1 at 16.

¹⁹ *Id.* at 16-17.

contents that when read in its entirety, the TPV shows there was a valid authorized carrier change.²⁴ We disagree. Simply including the words “long distance carrier” in the TPV does not change the fact that the verifier asked if the consumer had authority to change “service.” Providing “context” for the consumer through other questions and statements does not elicit the consumer’s authorization for a carrier change as the rules require. As the Commission has stated on numerous occasions, this rule is crucial to protect consumers, particularly where the Complainants contend that they did not intend to change carriers at all.²⁵

8. Moreover, the evidence shows that prior to the TPV, CTI’s telemarketer led many of the consumers to believe that the purpose of the sales call was to discuss their existing service, *not* to change carriers.²⁶ Consequently, the language of the TPV, “confirm the change in long distance service,” did not contradict what the CTI telemarketer told the consumers, i.e., that they were discussing a change in their current service (not a carrier change). As the Commission stated in the *Fourth Report and Order*, “some carriers introduce ambiguity into what should be a straightforward interaction by describing the carrier change offer as a mere ‘upgrade’ to existing service or in other ways that obscure the true purpose.”²⁷ Notably, after the Complainants discovered that their carrier was changed without their authorization, they took steps to switch back to their prior carrier, obtain a refund of the CTI charges, and file complaints against CTI due to the unauthorized carrier change and resulting unauthorized charges.

9. In its Petitions, CTI spends considerable time arguing that its TPVs are “virtually identical” to a handful of TPVs the Division reviewed in other slamming cases and found to comply with the rules. CTI asserts the Division therefore cannot find that the TPVs under review here were deficient.²⁸ We disagree. In all but one of the Division orders CTI cites, the TPVs were performed prior to the date the *Fourth Report and Order* and its rules became effective.²⁹ Thus, in those cases the Division was

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²⁰ 47 CFR § 64.1120(c)(3)(iii) (emphasis added).

²¹ *Fourth Report and Order*, 23 FCC Rcd at 502, para. 20 (emphasis added).

²² See *Consumer Telcom, Inc.*, Forfeiture Order, 31 FCC Rcd 10435, 10439-40, para. 10 (2016); see also, e.g., *Consumer Telcom, Inc.*, Order on Reconsideration, 27 FCC Rcd 5340, 5345, para. 17 (CGB 2012) (finding “the verifier’s question, ‘Do you have authority to make changes to your long distance service?’ did not confirm that the person was authorizing a change that would result in receiving service *from a different carrier.*”); *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 27 FCC Rcd 7338 (CGB 2012) (finding that CTI’s TPVs did not comply with the carrier change rules because the verifier asked whether the person on the call “has the authority to make changes to your long distance service”); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 1001 (CGB 2010) (same); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 1019 (CGB 2010) (same).

²³ See, e.g., Petition 2 at 19.

²⁴ *Id.* at 20.

²⁵ See, e.g., *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723, 3730, para. 21 (2017); *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13714, para. 8 (2015).

²⁶ See, e.g., Informal Complaint No. 09-S0296043 (filed Apr. 21, 2009); Informal Complaint No. 09-S002462 (filed May 26, 2009); Informal Complaint No. 09-S0296664 (each alleging that CTI told them they would be receiving a new plan to reduce their bill, not that they would be switching carriers); Informal Complaint No. 13-S003712 (alleging he was told they “were partnered with his current company”); Informal Complaint No. 12-S3404325

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bound to apply the rules in effect at the time of the TPVs.³⁰ Such rules did not include the specific requirement that TPVs not be misleading and convey explicitly that the consumer is authorizing a carrier change, rather than simply a change in service.

10. Further, in the one Division order involving a TPV after the new rules went into effect, the Division stated only that “based on U.S. Telecom’s response[,] coupled with information received from Complainant’s local exchange carrier, U.S. Telecom did not violate our carrier change rules.”³¹ This should hardly serve as notice to CTI that its own TPVs complied with the rules, even if they did contain “virtually identical” language to the TPV at issue in another proceeding.³² Each Division order is an individual adjudication involving a review of all record evidence in the case including the consumer’s complaint, the carrier’s response, and the customer account record exchange (CARE) information from the consumer’s local exchange carrier. Therefore, the findings in one proceeding do not necessarily bind the Division in another independent matter.

11. Even if we accept CTI’s argument that it should be able to rely on the Division’s findings in another slamming case, as early as January 2010, the Division issued an order to CTI specifically finding that its TPVs violated the rules.³³ The Division explained that asking a consumer if they were authorized to make “a change in long distance service” was not equivalent to asking about a carrier change. Nevertheless, even after the Division issued the order to CTI, CTI did not revise its TPV language and continued to change consumers’ carriers using the same TPV language the Division made clear was not in compliance.

12. Finally, CTI argues that the verifications at issue here are consistent with the analysis by the Division in a slamming order issued to Reduced Rate Long Distance.³⁴ In the *Reduced Rate* matter, the verifier asked the consumer, “[a]re you 18 years of age and duly authorized by the telephone account owner to make changes to and/or incur charges on this telephone account?” The Division found that this language did not confirm that the person on the call was authorized to make a carrier change. CTI

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(saying CTI “fraudulently represented themselves as Qwest”); Informal Complaint No. 13-S3718342 (“I was contacted by a representative who I understood to be a Century Link employee”); Informal Complaint No. 13-S3754504 (“I received a phone call from a man saying he was Verizon”).

²⁷ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19. The Commission has previously stated that third party verifier scripts “should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.” *Id.* (citing *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*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1553, para. 72 (1998)).

²⁸ See, e.g., Petition 1 at 7-14.

²⁹ *Id.* CTI cites *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 24 FCC Rcd 7296 (CGB 2009); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 18155 (CGB 2008); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 12973 (CGB 2008); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 7766 (CGB 2008); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 6992 (CGB 2008); *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 5133 (CGB 2008); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 3152 (CGB 2010); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 23 FCC Rcd 18258 (CGB 2008).

³⁰ See *Consumer Telcom, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order on Reconsideration, 27 FCC Rcd 5340, 5343-44, paras. 10-11 (CGB 2012) (finding that the Division appropriately applied the rules in effect at the time of the TPVs) (*CTI Order on Reconsideration*).

maintains that Reduced Rate's TPV "would have passed muster" with the Division had the verifier not used the term "and/or" and simply asked the consumer whether she was duly authorized by the telephone account owner to make changes to this telephone account.³⁵ CTI argues that the latter wording is "similar to" CTI's own verification language.³⁶ The Consumer and Governmental Affairs Bureau earlier rejected this argument.³⁷ We reiterate here that Section 64.1120(c)(3)(iii) requires verifiers to "ask the separate, discrete question as to whether the person is authorized to make a carrier change."³⁸ As with the verification in the *Reduced Rate* matter, the verifications at issue here do not elicit this information.

13. For the reasons stated above, we affirm the *Division Orders* and deny CTI's Petitions.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, Sections 1.106 and 1.719 of the Commission's rules, 47 CFR §§ 1.106, 1.719, and authority delegated by Sections 0.141 and 0.361 of the Commission's rules, 47 CFR §§ 0.141, 0.361, the Petitions for Reconsideration filed by Consumer Telcom, Inc., on April 27, 2010; June 17, 2013; August 19, 2013; and June 30, 2014, ARE DENIED.

15. IT IS FURTHER ORDERED that this Order is EFFECTIVE UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone
Deputy Chief
Consumer & Governmental Affairs Bureau

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³¹ See *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 25 FCC Rcd 3152, 3154, para. 4 (CGB 2010) (footnotes omitted).

³² It appears that CTI independently obtained the TPV (or transcript of the TPV) in the U.S. Telecom case and made an independent determination that its TPVs were consistent with the other TPV.

³³ *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 27 FCC Rcd 5340 (CGB 2010) (noting that in the TPV, the verifier asks whether the person on the call "has the authority to make changes to their long distance service").

³⁴ See, e.g., Petition 1 at 14-16 (citing *Reduced Rate Long Distance, LLC, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 11506 (CGB 2008), Order on Reconsideration, 24 FCC Rcd 2496 (CGB 2009)).

³⁵ See, e.g., Petition 1 at 14-16.

³⁶ *Id.*

³⁷ See *CTI Order on Reconsideration*, 27 FCC Rcd at 5344-45, paras. 12-15.

³⁸ *Id.*