

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

In the Matter of)	
)	
U.S. Telecom Long Distance, Inc.	)	Complaint Nos. 09-S0296678
	)	09-S0296228
Complaints Regarding	)	10-S0297532
Unauthorized Change of	)	10-S0297661
Subscriber's Telecommunications Carrier	)	10-S2770038
	)	10-S003005
	)	11-S3122796
	)	11-S3227066
	)	12-S003499
	)	12-S3357542
	)	12-S003455
	)	13-S003568
	)	13-S3612188
	)	13-S3692647
	)	13-S3754117

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 five petitions (collectively, Petitions) filed by U.S. Telecom Long Distance, Inc. (USTLD) asking us to reconsider fifteen Consumer Policy Division (Division) orders finding that USTLD changed consumers' telecommunications service providers without proper authorization verified in accordance with the Commission's carrier change rules.¹ On reconsideration, we affirm that USTLD'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

¹ See U.S. Telecom Long Distance, Inc.'s Petition for Reconsideration (filed April 27, 2010) (Petition 1); U.S. Telecom Long Distance, Inc.'s Petition for Reconsideration (filed May 14, 2013) (Petition 2); U.S. Telecom Long Distance, Inc.'s Petition for Reconsideration (filed May 14, 2013) (Petition 3); U.S. Telecom Long Distance, Inc.'s Petition for Reconsideration (filed Jan. 13, 2014) (Petition 4); U.S. Telecom Long Distance, Inc.'s Petition for Reconsideration (filed June 30, 2014) (Petition 5). The Petitions seek reconsideration of the Division orders referenced in the above-captioned proceedings. Each of USTLD'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).

rules require, among other things, that a carrier receive individual subscriber consent and follow specific 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. Fifteen consumers (Complainants) filed slamming complaints against USTLD, each alleging that their telecommunications service providers had been changed to USTLD without their authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules, the Division notified USTLD of the complaints.¹² In its responses, USTLD stated that the consumers' authorizations were received and confirmed through third-party verification recordings (TPVs).¹³ The Division reviewed the consumers' complaints, USTLD's responses, and the TPVs in each case, and determined that USTLD'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 [] 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-S0296678 (filed Aug. 11, 2009); 09-S0296228 (filed June 29, 2009); 10-S0297532 (filed Feb. 16, 2010); 10-S0297661 (filed Mar. 22, 2010); 10-S2770038 (filed Aug. 23, 2010); 10-S003005 (filed Oct. 7, 2010); 11-S3122796 (filed June 23, 2011); 11-S3227066 (filed Oct. 20, 2011); 12-S003499 (filed Sept. 10, 2012); 12-S3357542 (filed Mar. 26, 2012); 12-S003455 (filed July 16, 2012); 13-S003568 (filed Feb. 6, 2013); 13-S3612188 (filed Jan. 29, 2013); 13-S3692647 (filed June 26, 2013); 13-S3754117 (filed Nov. 20, 2013).

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 USTLD seeks reconsideration of the *Division Orders*.

III. DISCUSSION

5. Based on the record before us, we affirm the *Division Orders* and deny USTLD’s Petitions. As discussed below, we find that USTLD violated the Commission’s carrier change rules when, in each of the 15 cases, USTLD’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.

6. In each TPV, USTLD’s verifier asks the person on the call if they have the authority “to make changes to [their] long distance service.”¹⁶ Despite using this language, USTLD argues that the verifications confirm that the consumers were authorized to make a carrier change.¹⁷ It acknowledges, however, that “the wording [of the TPV] does not precisely parrot the FCC’s pertinent regulation” and contends that the rules contain “no specific incantation the verifiers must recite.”¹⁸ 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*”¹⁹ 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.”²⁰ 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 USTLD’s TPV statements suggesting that it was seeking verification only for a change in “service” were misleading and violated Section 64.1120(c)(3).²¹

7. USTLD also argues that the Division should have viewed the verifications in their entirety and that instead, the Division “improperly analyze[d] a single question asked by [USTLD’s]

(Continued from previous page) _____

¹⁴ See *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 24 FCC Rcd 3135 (CGB 2010); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4619 (CGB 2013) (granting six complaints); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4624 (CGB 2013) (granting three complaints); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 16640 (CGB 2013); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5805 (CGB 2014) (granting four 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 preferred carrier.” See *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5805, 5807, para. 4.

¹⁶ See TPVs and TPV transcripts provided with USTLD’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 U.S. Telecom Long Distance as your long distance carrier,” which the Division similarly found to be misleading and in violation of the rules. See *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 29 FCC Rcd 5805, 5807, para. 4.

¹⁷ See, e.g., Petition 1 at 3, 14.

¹⁸ *Id.* at 14.

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

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

verifier.”²² USTLD contends that when read in its entirety, the TPV shows there was a valid authorized carrier change.²³ 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.²⁴

8. In its Petitions, USTLD 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. USTLD asserts the Division therefore cannot find that the TPVs under review here were deficient.²⁵ We disagree. In all but two of the Division orders USTLD cites, the TPVs were performed prior to the date the *Fourth Report and Order* and its rules became effective.²⁶ Thus, in those cases the Division was bound to apply the rules in effect at the time of the TPVs.²⁷ 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.

9. Further, in one of the two Division orders 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.”²⁸ This should hardly serve as notice to USTLD that its TPV in that case or in other cases complied with the rules. 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.²⁹

(Continued from previous page)

²¹ See *U.S. Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10413, 10417-18, 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.”); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4624 (CGB 2013) (same); *U.S. Telecom Long Distance, Inc., Complaints Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 28 FCC Rcd 4619 (CGB 2013) (same); *U.S. Telecom Long Distance, Inc., Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier*, Order, 25 FCC Rcd 3135 (CGB 2010) (same).

²² See, e.g., Petition 2 at 18.

²³ *Id.* at 19.

²⁴ 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).

²⁵ See, e.g., Petition 1 at 4-11.

²⁶ *Id.* USTLD 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); *Consumer Telcom, Inc., Complaint*

(continued....)

10. Even if we accept USTLD'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 a slamming order specifically finding that the question, "are you authorized to make a change in long distance service," was not equivalent to asking about a carrier change.³⁰ Nevertheless, even after the Division issued the order, USTLD continued to change consumers' carriers using the same misleading TPV language the Division made clear was not in compliance.

11. Finally, USTLD 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.³¹ 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. USTLD 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.³² USTLD argues that the latter wording is "essentially identical to" USTLD's own verification language.³³ The Consumer and Governmental Affairs Bureau earlier rejected this argument.³⁴ 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."³⁵ As with the verification in the *Reduced Rate* matter, the verifications at issue here do not elicit this information.

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

(Continued from previous page) _____

Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, Order, 24 FCC Rcd 8816 (CGB 2009).

²⁷ 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*).

²⁸ 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).

²⁹ In the second case USTLD cites, it appears that the Division mistakenly found that another carrier's TPV complied with the revised rules when it did not. See *Consumer Telcom, Inc., Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 23 FCC Rcd 8816 (CGB 2009). The order did not detail the language used in the TPV, and we presume that USTLD independently obtained the TPV (or transcript of the TPV) in the Consumer Telcom case and made an independent determination that its TPVs were consistent with Consumer Telcom's TPV.

³⁰ *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").

³¹ See, e.g., Petition 1 at 11-13 (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)).

³² See, e.g., Petition 1 at 12.

³³ *Id.*

³⁴ See *CTI Order on Reconsideration*, 27 FCC Rcd at 5344-45, paras. 12-15.

³⁵ *Id.*

IV. ORDERING CLAUSES

13. 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 U.S Telecom Long Distance, Inc., on April 27, 2010; May 14, 2013 (two petitions); January 13, 2014; and June 30, 2014, ARE DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone
Deputy Chief
Consumer & Governmental Affairs Bureau