

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

In the Matter of)	
)	
Advantage Telecommunications Corp.	)	Complaint Nos. 09-S0297095
	)	09-S002523
Complaints Regarding	)	10-S002678
Unauthorized Change of	)	10-S0297316
Subscriber's Telecommunications Carrier	)	11-S3260185
	)	12-S003329
	)	12-S003394
	)	12-S003404
	)	12-S003487
	)	12-S3321933
	)	12-S3352925
	)	12-S3359518
	)	12-S3367252
	)	12-S3368371
	)	12-S3384503
	)	12-S3385055
	)	12-S3399214
	)	12-S3436983
	)	12-S3469071
	)	12-S3486645
	)	13-S003710
	)	13-S003650
	)	13-S003681

ORDER ON RECONSIDERATION

Adopted: April 3, 2019

Released: April 4, 2019

By the Deputy Chief, Consumer and Governmental Affairs Bureau:

I. INTRODUCTION

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

¹ See Advantage Telecommunications, Petition for Reconsideration (filed Jan. 31, 2012) (Petition 1); Advantage Telecommunications, Petition for Reconsideration (filed Jan. 25, 2012) (Petition 2); Advantage Telecommunications, Petition for Reconsideration (filed Feb. 20, 2013) (Petition 3); Advantage Telecommunications, Petition for Reconsideration (filed Feb. 22, 2013) (Petition 4); Advantage Telecommunications, Petition for Reconsideration (filed July 24, 2014) (Petition 5); Advantage

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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 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. Twenty-three consumers (Complainants) filed slamming complaints against Advantage, each alleging that their telecommunications service providers had been changed to Advantage without their authorization.¹¹ Pursuant to Sections 1.719 and 64.1150 of the Commission’s rules, the Division

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Telecommunications, Petition for Reconsideration (filed Aug. 26, 2014) (Petition 6). The Petitions seek reconsideration of the Division orders referenced in the above-captioned proceedings. Each of Advantage’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).

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-S0297095 (filed Oct. 30, 2009); 09-S002523 (filed Aug. 18, 2009); 10-S002678 (filed Jan. 20, 2010); 10-S0297316 (filed Jan. 4, 2010); 11-S3260185 (filed Oct. 24, 2011); 12-S003329 (filed Feb. 5, 2012); 12-S003394 (filed Apr. 25, 2012); 12-S003404 (filed May 3, 2012); 12-S003487 (filed Aug. 16, 2012);

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notified Advantage of the complaints.¹² In its responses, Advantage stated that the Complainants' authorizations were received and confirmed through third-party verification recordings (TPVs).¹³ The Division reviewed these complaints, Advantage's responses, and the TPVs in each case, and determined that Advantage'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 emphasized that "any description of the carrier change transaction . . . shall not be misleading."¹⁵ Advantage seeks reconsideration of the *Division Orders*.

III. DISCUSSION

5. Based on the record before us, we affirm the *Division Orders* and deny Advantage's Petitions. As discussed below, we find that Advantage violated the Commission's carrier change rules when, in each of the 23 cases, Advantage's verifier failed to confirm that the consumer wanted to make a *carrier change* and used misleading language that obscured the true purpose of the call.

6. In each TPV, Advantage's verifier stated that the purpose of the recorded conversation was to "confirm a change to your service as well as to facilitate accurate data."¹⁶ The verifiers in most cases also ask the person on the call, "are you 18 years of age and duly authorized by the telephone account owner to make changes to and incur charges on the telephone account?"¹⁷ Despite using this language, Advantage argues that it did not violate Section 64.1120 of the Rules because, "when taken in their entirety, the third-party verifications clearly demonstrate Advantage did not mislead its customers, who were made fully aware that the purpose of the call was to change the consumer's preferred carrier."¹⁸ Advantage contends that the Division failed to consider the overall impression and content of the TPV recordings, and instead erroneously focuses on "isolated phrases or statements."¹⁹ We disagree. Section

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12-S3321933 (filed Feb. 6, 2012); 12-S3352925 (filed Mar. 15, 2012); 12-S3359518 (filed Mar. 19, 2012); 12-S3367252 (filed Apr. 11, 2012); 12-S3368371 (filed Mar. 26, 2012); 12-S3384503 (filed Apr. 25, 2012); 12-S3385055 (filed May 1, 2012); 12-S3399214 (filed May 8, 2012); 12-S3436983 (filed July 12, 2012); 12-S3469071 (filed July 14, 2012); 12-S3486645 (filed Oct. 1, 2012); 13-S003710 (filed Dec. 23, 2013); 13-S003650 (filed July 22, 2013); 13-S003681 (filed Sept. 18, 2013).

¹² See 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 CFR § 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. 47 CFR § 64.1120(c)(3).

¹⁴ See *Advantage Telecommunications, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 26 FCC Rcd 17102 (CGB 2011); *Advantage Telecommunications, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 26 FCC Rcd 17001 (CGB 2011); *Advantage Telecommunications, Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 282 (CGB 2013) (granting two complaints); *Advantage Telecommunications, Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd 287 (CGB 2013) (granting sixteen complaints); *Advantage Telecommunications, Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 29 FCC Rcd 7621 (CGB 2014); *Advantage Telecommunications, Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 29 FCC Rcd 9392 (CGB 2014) (granting two complaints) (collectively, *Division Orders*).

¹⁵ See *Division Orders* at para. 4.

¹⁶ See TPVs and TPV transcripts provided with Advantage's complaint responses.

¹⁷ See, e.g., *Advantage Telecommunications, Complaints Regarding Unauthorized Change of Subscriber's Telecommunications Carrier*, Order, 28 FCC Rcd at 284, para. 4.

64.1120(c)(3) of the Rules sets forth detailed procedures that carriers using a TPV to verify consumer authorization must follow. The carrier's verifier must confirm that the person on the call wants and authorizes a *carrier change*—not an upgrade to existing service, bill consolidation, or any other transaction.²⁰ Advantage acknowledges, however, that its verifiers told the consumers that the purpose of the verification was to confirm a “change to your *service*” and asked the consumers if they were authorizing Advantage to “change [their] long distance *service*. . . .”²¹

7. 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*”²² 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.”²³ In the TPVs at issue here, the verifier’s statement that the purpose of the conversation was to confirm a change in service as well as to facilitate accurate data was misleading and did not confirm that the person would be 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 Advantage’s TPV statements suggesting that it was seeking verification only for a change in “service” and to “facilitate accurate data” were misleading and violated Section 64.1120(c)(3).²⁴

8. The Commission explained in its *Fourth Report and Order* that “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.”²⁵ Thus, “the scripts used by the independent third-party verifier should clearly and conspicuously confirm that the subscriber has previously authorized a carrier change.”²⁶ Advantage’s characterization of the Division’s findings as “parsing out isolated portions of the verification recording[s]”²⁷ does not change the fact that its TPVs did not comply with the rules. 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

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¹⁸ See, e.g., Petition 1 at 2.

¹⁹ *Id.* at 13.

²⁰ 47 CFR § 64.1120(c)(3)(iii).

²¹ See, e.g., Petition 1 at 4-5 (emphasis added).

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

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

²⁴ See *Central Telecom Long Distance, Inc.*, Forfeiture Order, 31 FCC Rcd 10392, 10396-97, 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.*, Complaint Regarding Unauthorized Change of Subscriber’s Telecommunications Carrier, Order, 25 FCC Rcd 3135 (CGB 2010) (same); *Advantage Telecommunications Corp.*, Forfeiture Order, 32 FCC Rcd 3723, 3730-31, paras. 20-21 (2017) (*Advantage Forfeiture Order*).

²⁵ *Fourth Report and Order*, 23 FCC Rcd at 501, para. 19.

²⁶ *Id.* (quoting *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)).

²⁷ See, e.g., Petition 1 at 6.

has stated on numerous occasions, this rule is crucial to protecting consumers, particularly where the Complainants contend that they did not intend to change carriers at all.²⁸

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

IV. ORDERING CLAUSES

10. 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 Advantage Telecommunications Corp., on January 25, 2012; January 31, 2012; February 20, 2013; February 22, 2013; July 24, 2014; and August 26, 2014, ARE DENIED.

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

FEDERAL COMMUNICATIONS COMMISSION

Mark A. Stone
Deputy Chief
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²⁸ See, e.g., *Advantage Forfeiture Order*, 32 FCC Rcd at 3730, para. 21; *Preferred Long Distance, Inc.*, Forfeiture Order, 30 FCC Rcd 13711, 13714, para. 8 (2015).