

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

In the Matter of
Tele Circuit Network Corporation
Complaints Regarding
Unauthorized Change of
Subscribers' Telecommunications Carrier
Complaint Nos. 264374
590205
673693
831790
860277
884831
991483
1071309
1070166
1227246
1376081
1512375
2378918

ORDER

Adopted: April 8, 2019

Released: April 8, 2019

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

1. In this Order, we consider thirteen complaints<sup>1</sup> alleging that Tele Circuit Network Corporation (Tele Circuit) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that Tele Circuit's actions violated the Commission's carrier change rules, and we therefore grant Complainants' complaints.

2. Section 258 of the Communications Act of 1934 (the Act), as amended, 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.<sup>3</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>4</sup> 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.<sup>5</sup> 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 authorization.<sup>6</sup>

<sup>1</sup> See Appendix.

<sup>2</sup> See 47 CFR §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a).

<sup>4</sup> See 47 CFR § 64.1120.

<sup>5</sup> See 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.

<sup>6</sup> 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 (continued....)

3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.<sup>7</sup> Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Tele Circuit of the complaints.<sup>8</sup> Tele Circuit responded to the complaints, stating that it had obtained authorization from the Complainants. However, Tele Circuit failed to provide any proof of authorization, including a third party verification (TPV) recording.<sup>9</sup> The failure of Tele Circuit to provide proof of verified authorization is presumed to be clear and convincing evidence of violations.<sup>10</sup> Therefore, we find that Tele Circuit's actions resulted in violations of our carrier change rules, and we discuss Tele Circuit's liability below.<sup>11</sup> We also will forward a copy of the record of these proceedings to our Enforcement Bureau to determine what additional actions may be necessary.

4. Tele Circuit must remove all charges incurred for service provided to Complainants for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.<sup>12</sup> We have determined that Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither the Complainants' authorized carriers nor Tele Circuit may pursue any collection against Complainants for those charges.<sup>13</sup> Any charges imposed by Tele Circuit on the Complainants for service provided after this 30-day period shall be paid by the Complainants to the authorized carrier at the rates the Complainants were paying the authorized carriers at the time of the unauthorized change of their telecommunications service provider.<sup>14</sup>

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 complaints against Tele Circuit Network Corporation ARE GRANTED.

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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.

<sup>7</sup> *See* Appendix.

<sup>8</sup> 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).

<sup>9</sup> In two of the cases, Tele Circuit did not even assert that it had obtained authorization from the Complainants. Instead, in response to one complaint, Tele Circuit stated only that the consumer was connected to Tele Circuit but did not report any issues with the service. *See* Tele Circuit Response to Informal Complaint No. 831790. In response to another complaint, Tele Circuit simply said the consumer was no longer connected to Tele Circuit and that she had a zero balance. *See* Tele Circuit Response to Informal Complaint No. 2378918. Tele Circuit provided no proof of authorization for the carrier change in either case.

<sup>10</sup> *See* 47 CFR § 64.1150(d).

<sup>11</sup> 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.

<sup>12</sup> *See id.* § 64.1160(b).

<sup>13</sup> *See id.* § 64.1160(d).

<sup>14</sup> *See id.* § 64.1140, 64.1160.

6. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 CFR § 64.1170(d), Complainants are entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that Tele Circuit Network Corporation may not pursue any collection against Complainants for those charges.

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

FEDERAL COMMUNICATIONS COMMISSION

Nancy Stevenson  
Deputy Chief  
Consumer Policy Division  
Consumer & Governmental Affairs Bureau

## APPENDIX

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>
264374	April 29, 2016	January 4, 2016
590205	October 14, 2015	December 15, 2015
673693	November 23, 2015	January 25, 2016
831790	February 24, 2016	June 22, 2016
860277	March 11, 2016	June 22, 2016
884831	March 30, 2016	August 15, 2016
991483	May 20, 2016	September 28, 2016
1071309	July 6, 2016	September 28, 2016
1070166	July 6, 2016	September 28, 2016
1227246	September 29, 2016	November 28, 2016
1376081	January 2, 2017	April 20, 2017
1512375	March 8, 2017	April 27, 2017
2378918	April 5, 2018	April 18, 2018