

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

|   |   |                        |
|---|---|------------------------|
| In the Matter of                        | ) |                        |
|   | ) |                        |
| Birch Communications                    | ) | Complaint Nos. 1783212 |
|   | ) | 1814253                |
| Complaints Regarding                    | ) | 1831324                |
| Unauthorized Change of                  | ) | 1858731                |
| Subscribers' Telecommunications Carrier | ) | 1994982                |
|   | ) | 2252231                |
|   | ) | 2265852                |
|   | ) | 2288891                |
|   | ) | 2340098                |
|   | ) | 2373601                |
|   | ) | 2415426                |
|   | ) | 2429846                |
|   | ) | 2436968                |
|   | ) | 2440040                |
|   | ) | 2448643                |
|   | ) | 2547669                |
|   | ) | 2594345                |

**ORDER**

**Adopted: April 15, 2019**

**Released: April 15, 2019**

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

1. In this Order, we consider the complaints<sup>1</sup> alleging that Birch Communications (Birch) 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 Birch has responded fully to the Complainants' complaints and has taken action to resolve the 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

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<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.

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>

3. We received Complainants' complaints alleging that Birch had changed Complainants' telecommunications service providers without Complainants' authorization.<sup>7</sup> Pursuant to Sections 1.719 and 64.1150 of our rules, we notified Birch of the complaints.<sup>8</sup> Based on the information provided by Birch, it appears that Birch has fully absolved Complainants of all charges assessed by Birch in a manner consistent with the Commission's liability rules.<sup>9</sup> We therefore find that the complaints referenced herein have been resolved.

4. 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 filed against Birch Communications, ARE RESOLVED.

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

Sincerely,



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

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<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 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> *Id.* § 64.1160. We note that many of the Complainants allege that Birch's telemarketer misrepresented the nature of the transaction during the sales call. Under the Commission's rules, 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 switch, *e.g.*, a third-party verification recording. *Id.* § 64.1120(a)(1)(i)(A); see also 47 U.S.C. § 201(b). While we find that Birch has resolved the complaints here, we nevertheless will forward a copy of the record in these proceedings to the Enforcement Bureau for further review.

## APPENDIX

| <u>COMPLAINT<br/>NUMBER</u> | <u>DATE OF<br/>COMPLAINT</u> | <u>DATE OF<br/>RESPONSE</u> |
|-----------------------------|------------------------------|-----------------------------|
| 1783212                     | July 17, 2017                | September 4, 2017           |
| 1814253                     | July 31, 2017                | September 4, 2017           |
| 1831324                     | August 7, 2017               | September 7, 2017           |
| 1858731                     | August 17, 2017              | September 20, 2017          |
| 1994982                     | October 19, 2017             | November 29, 2017           |
| 2252231                     | February 21, 2018            | April 1, 2018               |
| 2265852                     | February 26, 2018            | April 1, 2018               |
| 2288891                     | March 8, 2018                | April 16, 2018              |
| 2340098                     | March 30, 2018               | May 14, 2018                |
| 2373601                     | April 12, 2018               | May 22, 2018                |
| 2415426                     | April 30, 2018               | June 4, 2018                |
| 2429846                     | May 7, 2018                  | June 17, 2018               |
| 2436968                     | May 9, 2018                  | June 17, 2018               |
| 2440040                     | May 10, 2018                 | June 16, 2018               |
| 2448643                     | May 14, 2018                 | June 19, 2018               |
| 2547669                     | June 6, 2018                 | July 24, 2018               |
| 2594345                     | June 26, 2018                | July 30, 2018               |